



## ENVIRONMENTAL LAW & POLICY CENTER

April 27, 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 Reply 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 the Reply 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,

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cc: Service List, Case No. U-21985

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**STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

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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.	)	

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**REPLY 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 27, 2026**

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## I. INTRODUCTION

Michigan is facing two crises. The first is energy affordability. The second is dam safety in light of flooding realities and necessary repairs. Consumers Energy's proposed sale of 13 dams to Confluence Hydro, an out-of-state, financially opaque private equity firm, its proposed super-high priced Power Purchase Agreement, its proposed application of an additional profit through the financial compensation mechanism ("FCM"), and its other measures, if allowed, would exacerbate and worsen both crises. The Commission should deny approval of these misguided proposals that are contrary to the applicable Michigan legal standards. Michigan public officials and stakeholders of good will should then work together to achieve better solutions that better protect Michigan ratepayers, rivers and taxpayers.

MHRC's Initial Brief explains why Consumers Energy's proposed sale of the 13 dams creates unacceptable risks to the State of Michigan, its ratepayers and its taxpayers, and that Consumers Energy failed to meet its burden of proof for meeting the statutory standards in MCL 460.6q. By contrast, neither Consumers Energy's nor Confluence Hydro's briefs come remotely close to demonstrating that Confluence can somehow operate Consumers Energy's unprofitable dams profitably. Confluence has provided no record evidence of any path to profitability, and what's sadly and reasonably predictable is that this private equity owner, with 13 "ring-fenced" separate LLCs, will neglect necessary repairs or bankrupt the LLCs, will walk away from the unprofitable dams, and will attempt to dump those costs and liabilities onto the State of Michigan, its taxpayers and its ratepayers.

On far too many issues, Consumers Energy essentially speaks for Confluence and argues "trust us," which doesn't meet the statutory standard applicable to this case. The Commission should recognize that:

The Company determined that the required investments in these aging plants would cost hundreds of millions of dollars over the next several years, which significantly exceeded the value of the energy and capacity the plants are expected to produce for customers. There wasn't good economic justification for the required investments, but the plants could not continue to operate safely and receive FERC license renewals without the investments. That seemingly would leave only one other option: decommissioning.

Consumers Initial Br. at 2.

That statement was made *before* the intense rains and flooding over the past two weeks that have exposed dam safety risks. The high waters have made totally clear the imperative of repairing and maintaining the dams and spillways, or removing the dams, and the terrifying risks to public health, communities, river systems and property. Consumers Energy argues that relicensing is not economical, but it proposes: (1) selling the dams to Confluence under an agreement where the current employees would still operate the dams, (2) a new super-high, unreasonably priced PPA requiring Consumers' customers to buy back the dams' entire output from Confluence at way above-market rates, (3) **plus** *the added FCM above-and-beyond profit that Consumers Energy would also charge to Michigan ratepayers*. The over-priced power costs charged to ratepayers, and the FCM on top of that, will exacerbate energy affordability problems.

MHRC Opening Br. at 18.

This scenario whereby the regulated public utility offloads the aging dams to a private equity firm, while as a practical matter, transferring more risks and liabilities to the Michigan public, is simply unfair, unreasonable and defies common sense. Either it makes good economic sense to relicense the dams or it doesn't. Consumers Energy presents no evidence to support the magical thinking that the same Consumers Energy employees, led by Witness Monroe, operating the dams today will somehow run them more efficiently and safely for Confluence Hydro.

Confluence Hydro's fuzzy math depends on the overpriced PPA, which requires Consumers Energy to pay \$160/MWh for the dams' power output. But even then, **BEGIN**

The severe threats to Michigan dam safety of destructive flooding due to the intense storms and incessant rainfall over the past two weeks resulted in Michigan Governor Gretchen Whitmer declaring a “state of emergency” for 40 flood-ravaged counties, as well as the cities of Ann Arbor and Kalamazoo.<sup>1</sup> The stakes are high. Consumers Energy itself recognizes that the dams need significant investment for repairs, spillways and other safety improvements. When the storms hit, Consumers Energy issued a News Release, “Consumers Energy: Company’s Dams Continue Serving Michigan Safely Through Intense Weather.” Consumers Energy stated: “The energy provider is committed to the safety of the communities downstream of the dams.”<sup>2</sup> The news release is a stark reminder that Consumers Energy is a regulated public utility that has public stewardship responsibilities and obligations. No matter how Consumers Energy and Confluence spin this, putting the dams in the hands of an out-of-state private equity firm with no dam operating experience, 13 LLCs, opaque financials, and different profit expectations fundamentally changes the risks and fairness equation. For the reasons explained in MHRC’s Initial Brief and set forth below, the proposed sale does not meet the standards under MCL 460.6q, and the Commission should not approve the sale.

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<sup>1</sup> Michigan Administrative Rule R 792.10428 allows the Commission and the presiding officer to “take official notice of judicially cognizable facts and may take notice of general, technical, or scientific facts within the commission’s specialized knowledge.” The governor’s declaration of emergency related to the extreme weather in Michigan is the type of “general...facts” which the Commission can take official notice of. <https://www.michigan.gov/whitmer/news/press-releases/2026/04/17/whitmer-adds-five-counties-two-cities-to-state-of-emergency-declaration>.

<sup>2</sup> MHRC similarly asserts that the Consumers Energy press release qualifies as a “general...fact[.]” eligible for official notice. Consumers Energy News Release, April 15, 2026. <https://www.consumersenergy.com/news-releases/news-release-details/2026/04/15/consumers-energy-dams-continue-serving-michigan-safely-through-intense-weather>.

## **II. THE COMMISSION SHOULD CONCLUDE THAT IT IS CONTRARY TO THE PUBLIC INTEREST FOR THE 13 DAMS TO BE PURCHASED, OWNED AND CONTROLLED BY CONFLUENCE HYDRO, A PRIVATE EQUITY FIRM**

Confluence Hydro's brief misconstrues the Commission's responsibility to protect the public and cherry-picks testimony from other parties to create a misleading picture that does not comport with the overall factual evidence in the record. Confluence Hydro filed a brief even though it submitted *no* testimony that parties could cross-examine, and even though it dodged and evaded responding to some key discovery. Hull Street Energy refused to respond to any and all discovery. Confluence Hydro's brief is an elegantly written distortion of the reality of the proposed transaction and its impacts.

On a key fundamental issue of risk to the state, while Confluence Hydro states in its Initial Brief at page 7 that "Confluence will bear full legal responsibility for the condition and operation of the thirteen facilities," it ignores without explanation that Confluence will be creating 13 separate LLCs in order to ring-fence future liabilities at each of the individual dams. This 13 separate LLC structure will enable bankruptcies that would transfer the liabilities to the State of Michigan, and its taxpayers and ratepayers. Michigan has sadly learned these lessons from Boyce Hydro LLC's ownership of the Edenville and Sanford Dams, and UP Hydro LLC's ownership of the Au Train Dam.

Another example of Confluence distorting facts: Confluence states that it is "a subsidiary of Hull Street Energy, [which] is a private equity firm with significant experience owning, operating, and investing in power generation assets across North America, including hydroelectric generation. Hull Street Energy has not received any hydro safety violations during its period of ownership." Confluence Initial Br. at 7-8. That sidesteps the facts that:

(1) Confluence Hydro itself is newly created and has **no** track record of owning and operating hydro dams at all—and that private equity firms buy power plants to maximize profits. MHRC Initial Br. at 57;

(2) Confluence Hydro is actually a wholly owned subsidiary of Hull Street Energy Partners III LP, which is also newly created, has **no** track record of owning and operating hydro dams at all, and is structurally separated from the parent company Hull Street Energy. MHRC Initial Br. at 8; DNR Initial Br. at 22. DNR’s brief reproduced a chart depicting the corporate structure of Confluence Hydro showing **at least five layers between the individual dam LLCs and Hull Street Energy**. DNR Initial Br. at 22. Furthermore, all of the people who will manage and operate the dams for Confluence currently work at Consumers Energy; and

(3) Hull Street Energy, the parent company, is a dam-flipper, not a long-term dam operator with any meaningful extended track record. As MHRC explains in our Initial Brief, Hull Street Energy sold 32 of the 47 dams within three years of purchase, and **all** of the dams, except one, within around five years of purchase. MHRC Initial Br. at 58; Ex. MHRC-45; *see also* Staff Initial Br. at 41.

Confluence Hydro argues in its brief – without having submitted supportive testimony—that “substantial evidence on the record” supports the proposed sale. Confluence Initial Br. at 5, 11. However, this private equity firm’s brief ignores: (1) the testimony from DNR, MHRC, ABATE regarding lower cost decommissioning and relicensing options; and (2) **BEGIN**

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substantively respond to this record evidence, or MHRC Witness Jester’s analysis that shows Confluence will lose \$710 million (in net present value) through 2086, MHRC Initial Br. at 45-

46, Confluence repeats the same conclusory response as Consumers Energy: “[t]he 30-year PPA provides long-term revenue to fund continued operation and investment, and itself serves as an incentive for Confluence to hold the facilities for the long term.” Confluence Initial Br. at 9.

Confluence has carefully designed a “house of cards” that, if and likely when it collapses, transfers the risks to the State of Michigan and its taxpayers and ratepayers, away from the out-of-state private equity firm and its investors. While Consumers Energy’s and its shareholders earn a regulated rate of return in exchange for the reduced risks of a public utility, MHRC Witness Judge Wedoff (ret.) explained that “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; MHRC Initial Br. at 67; *see* DNR Initial Br. at 23. Confluence Hydro seeks to have its cake and eat it too by designing a structure of 13 ring-fenced LLCs that allows **both** its higher profits through the overpriced PPA **and** facilitates its ability to dump its liabilities and risks on Michigan taxpayers and ratepayers.

Confluence Hydro’s brief obscures the reality of the enormous risks and liabilities to Michigan’s ratepayers, rivers and taxpayers. Confluence Hydro’s primary obligation is to its investors, and nothing here changes that. The Commission should give little weight to a brief from a newly created private equity firm that failed to submit its own testimony, evaded scrutiny that comes on cross examination, and failed to provide complete answers on key issues in discovery.

### III. THE COMMISSION HAS BROAD AUTHORITY UNDER MCL 460.6q TO REVIEW CONSUMERS ENERGY'S PROPOSED TRANSACTIONS

#### A. Confluence Hydro Misstates the Commission's Broad Authority Analyzing the Sale

MCL Section 460.6q(7) requires the Commission to consider five factors: (1) the impact on rates; (2) the impact on safe, reliable service; (3) potential subsidization of the new entity; (4) the utility's ability to raise capital; and (5) public policy and interest. The statute also explicitly places those five factors within a broader universe of issues—the commission shall consider them “among other factors.” MCL 460.6q(7). The AG, MPSC Staff, and MHRC all agree that, when considering the sale of a utility asset the Commission has broad authority to consider the public interest and protect utility ratepayers. MHRC addresses the issue in detail in its Initial Brief at pages 15-17. Consumers Energy references it in a broad way, without discussion.

In contrast to other parties' interpretation, Confluence Hydro misreads the statutory language and the Commission's delegated authority. Confluence argues that the Commission as a “creature of the Legislature...possesses only those powers conferred upon by it by statute.” Confluence Initial Br. at 3, citing *Union Carbide Corp v. Public Service Comm'n*, 431 Mich 135, 148-149 (1988). According to Confluence, the Commission lacks authority to consider DNR's concerns regarding fish migration, water temperature standards and the adequacy of FERC enforcement of standards. Confluence Initial Br. at 4. Similarly, Confluence seeks to relegate issues raised by MHRC like fraudulent transfer and recreational impacts to “secondary public concerns” that can be ignored. *Id.* According to Confluence, “[t]he Commission need not and should not duplicate FERC's regulatory oversight in conducting its own statutory analysis.” *Id.*

Confluence's statutory misinterpretation is fundamentally flawed for two reasons. **First**, the Commission *is* a “creature of the Legislature,” but in this case, the Legislature explicitly authorized the Commission to consider “public policy and interest,” MCL 460.6q(7)(e), *and*

expanded the scope of review beyond the five enumerated factors, stating, “[t]he Commission shall consider among other factors,” giving it wide purview to consider anything pertinent in determining if it should approve the sale. MCL 460.6q(7). Confluence misinterprets the Michigan Supreme Court’s decision in *Union Carbide*, which is a rate case with different legal standards than a sale of the utility assets. Moreover, *Union Carbide* confirms that the Commission “may regulate with a view to enforcing reasonable rates and charges,” which MHRC asks the Commission to do in considering the rate impacts from the proposed sale compared to the other, better options. *Id.* at 149.

**Second**, as MHRC and DNR have explained, FERC’s very limited ability to oversee the safe operation of dams is directly relevant to the Commission’s decision, MHRC Initial Br. at 50-57; DNR Initial Br. at 16-21. Of course, the Commission is also tasked with considering whether the sale will have an “adverse impact on the provision of safe...energy service.” MCL 460.6q(7)(b). In addition, fraudulent transfer relates to the State’s responsibility in the event of bankruptcy or abandonment, another key consideration for the Commission. MHRC Initial Br. at 43-44.

The Commission can certainly consider the other “public policy and interest” issues, as specified by the governing statute, and they must be given weight by the Commission in its decision. MCL 460.6q(7)(e). The Commission has wide latitude to “weigh economic and public policy factors.” *Attorney General v. Public Service Comm.*, 262 Mich. App. 649, 655 (2004), citing *Consumer Power Co. v. Public Service Comm.*, 460 Mich. 148, 156 (1999). The State’s public resources “are precious assets to be preserved for present and future generations,” and such protection furthers the ‘public interest.’” *People ex rel. MacMullan v. Babcock*, 38 Mich. App. 336, 352 (1972). Accordingly, the Commission can and certainly should consider the

“public policy and interest” issues and evidence presented by DNR and MHRC in reaching its decision in this case.

**B. Michigan Law Authorizes the Commission to Impose Conditions on the Utility Asset Sales as Proposed in this Case**

The Commission is statutorily empowered to modify a proposed transaction by “impos[ing] reasonable terms and conditions” to protect the utility and its customers. MCL 460.6q(8), (9). The Commission has exercised that authority in similar cases to impose conditions to protect the public’s interests. MHRC Initial Br. at 14 n.4.

Consumers Energy argues again in its brief that “the transaction is not open for renegotiation. The Commission should recognize the commercial reality – there is no starting over or opportunity to change the transaction.” Consumers Initial Br. at 2; Blumenstock Rebuttal, 3 TR 74. Consumers Energy’s *all or nothing* demand subverts the Commission’s mandate to protect utility customers and the public. The AG, Staff and MHRC’s Initial Briefs all address Consumers Energy’s wrongful attempt to strip away the Commission’s statutory authority to impose necessary conditions to protect ratepayers. AG Initial Br. at 50; Staff Initial Br. at 56; MHRC Initial Br. at 6. The Commission should deny approval of the proposed sale and PPA and not assent to Consumers Energy’s “my way or the highway” pressure tactics.

**IV. CONSUMERS ENERGY IGNORES THE RISKS OF CONFLUENCE HYDRO’S OWNERSHIP**

**A. Despite Consumers Energy’s Argument, the PPA Does Not Create Sufficient Revenue for Confluence Hydro to Safely Operate the Dams**

Consumers Energy steadfastly repeats its argument that “[t]he PPA revenue will be sufficient to cover Confluence Hydro’s dam safety investments.” Consumers Initial Br. at 12, 53, 68; Blumenstock Direct, 3 TR 47-48; Blumenstock Rebuttal, 3 TR 109-110, 118, 120, 133. But

Consumers Energy did not introduce any financial analysis to support this conclusion.

Consumers Energy relies solely on the same, repeated conclusory statements.

Despite Consumers Energy’s unsupported assurances, the actual record evidence demonstrates the opposite. Multiple parties *including Confluence Hydro* demonstrated that, even with the overpriced PPA, Confluence Hydro will lose money on the transaction. *See* AG Initial Br. at 32-33; Staff Initial Br. at 15; MHRC Initial Br. at 45-48. **BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**CONFIDENTIAL** Further, after the PPA ends MHRC Witness Jester projects that through 2086, Confluence Hydro will lose \$710 million. Jester Direct, 3 TR 621.

While Consumers Energy speculated that the pro forma financial statement submitted by Confluence might underestimate revenue, it never provided a reasonable explanation on how Confluence can run the dams safely and effectively while losing so much money without any prediction of when it will turn a profit. MHRC Initial Br. at 48. Consumers Energy Witness Blumenstock did not speak to Confluence Hydro about any of his theories to increase profitability. Ex. MHRC-72; Ex. MHRC-75. According to the Company, the Commission should not worry about profitability, because the newly created Confluence Hydro, established 2025, “has proven to be a financially responsible business.” Ex. MHRC-73.

Consumers Energy hypothesized that Confluence “may see value beyond the term of the 30-year PPA,” Blumenstock Rebuttal, 3 TR 118. Having grasped at straws, Consumers Energy



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It does not matter how many times and how many different ways Consumers Energy insists that the PPA will sufficiently incentivize Confluence Hydro to safely operate the dams. The facts tell a different story. The Commission must assume that Confluence Hydro is not purchasing the dams to lose money, and therefore, the private equity firm must have other plans it has failed to disclose. Any version of that playbook, underinvestment or bankruptcy, would be detrimental to ratepayers and the State of Michigan, and grounds to deny approval of the sale.

**B. Consumers Energy Wrongly Asserts That “Existing Regulatory and Contractual Guardrails” Will Protect the Public**

In its Initial Brief, Consumers Energy attempts to assure the Commission regarding the lack of protections in the proposed transaction. The Company argues that:

the transaction documents include guardrails that directly respond to...concerns and balance risk allocation with the need to make a clean transfer of ownership and responsibility. While the transaction documents may not require or prohibit certain undesirable actions, they will work together to establish a comprehensive scheme of incentives that will assure the desired results.

Consumers Initial Br. at 10. Consumers Energy also argues against Staff’s recommended parental guarantee by stating that “Staff’s stated concerns about safe and responsible operation and eventual disposition are addressed by existing regulatory and contractual guardrails including FERC’s continuing oversight.” Consumers Initial Br. at 68; *see also* Confluence Initial Br. at 8.

The Commission and the public cannot and should not rely on “existing regulatory and contractual guardrails” to protect the State from the risks of private ownership of this aging fleet of dams. The record demonstrates FERC oversight has not and will not provide sufficient regulatory protection. Michigan DNR explains in strong, sober terms why this fanciful thinking is contrary to reality:

The Federal Energy Regulatory Commission (FERC) is not a reliable dam safety enforcement agency. There are examples of private hydro dam owners in Michigan, regulated solely by FERC, *openly flaunting dam safety directives from FERC for decades*, all the while continuing to generate revenue from the dams, without FERC taking any enforcement action. As Ms. Mistak testified: FERC “is not an effective enforcer of its dam safety standards if the dam owner is unwilling to act. If a noncompliant dam owner would prefer not to invest in complying with FERC’s dam safety directives, FERC will allow that situation to persist for many years.” (Mistak Direct Testimony, 13:6.) This is not speculation on Ms. Mistak’s part; there are concrete examples of this occurring in Michigan.

DNR Initial Br. at 16 (emphasis added). MHRC likewise extensively detailed the gaps in FERC oversight, and even more specifically, in the FERC license transfer review process. MHRC Initial Br. at 50-57. MPSC Staff also cautioned the Commission to “critically evaluate the risks and potential outcomes of a loss of its oversight of the Hydro fleet through its transfer to Confluence.” Staff Initial Br. at 46; *see also* DNR Initial Br. at 16.

Moreover, Consumers Energy admitted that: (1) it is not aware of FERC ever having denied a license transfer, Ex. MHRC-39, and (2) its primary witness on FERC issues has never worked on a license transfer and did not look at *any* license transfer decision while forming his opinion for testimony. Monroe Cross Exam, 3 TR 187. As DNR explained, the issues with FERC oversight do not end at the license transfer process, “FERC has a track record of allowing dam safety deficiencies to persist for decade without taking any meaningful action.” DNR Initial Br. at 16; *see* MHRC Initial Br. at 50-57.

Consumers Energy also attempts to downplay the Commission’s existing regulatory oversight, arguing that the “MPSC has no regulatory oversight over dam safety beyond cost approval or denial for safety-related projects.” Consumers Initial Br. at 52. This mischaracterizes and undersells the Commission’s role. As Staff explained, “to say that there would be no reduction in regulatory oversight would minimize the role that the Commission has played in ensuring the continued safe operation and future decommissioning of these assets.” Staff Initial

Br. at 43. Absent such oversight, the evidence in the record shows Confluence will be motivated to limit expenditures in order to increase profit. MHRC Initial Br. at 43-45.

Furthermore, Consumers Energy’s argument that “contractual guardrails” will incentivize Confluence Hydro’s good behavior is entirely illusory—**there are no contractual safeguards**. The record clearly establishes that the contract fails to limit Confluence Hydro’s behavior going forward. Confluence Hydro can:

- Sell the dams if the Commission approves this sale. Ex. MHRC-48; Ex. MHRC-67.
- Bankrupt an unprofitable dam and its separate LLC at any time without recourse. Lyon Direct, 3 TR 685-86.
- Choose not to produce power from any dam at any time. Ex. MHRC-47.
- Sell the land around the dams if the project boundaries shrink at relicensing. Ex. AG-24.

Consumers Energy does not point to anything in the contract to counter these basic points it conceded in discovery. The Company downplays risk, arguing Confluence Hydro cannot “dissolve all liabilities” because “the [Purchase and Sale Agreement] includes provisions that permanently transfer nearly all liabilities associated with the plants from Consumers Energy to Confluence Hydro and requires Confluence Hydro to indemnify the Company against those liabilities in perpetuity.” Consumers Initial Br. at 69. But the Purchase and Sale Agreements offer no protection if Confluence Hydro declares bankruptcy for any of its 13 separate LLCs. MHRC Initial Br. at 39-41. Instead of concrete responses to critical questions from Staff and Intervenors, Consumers Energy points to its hope and belief, and the “intent” of its transaction partner, Confluence Hydro, which does not have the public responsibilities that regulated public utility does have. Consumers Initial Br. at 52, 53.

Consumers Energy also argues that the remaining contractual provisions will keep Confluence Hydro in check, but these do not protect ratepayers or the public either. **First,**

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**Second**, the environmental indemnity agreement (“EIA”) does not sufficiently cover the risk presented by private ownership of these aging hydroelectric dams. MHRC Initial Br. at 63-64. The EIA requires Confluence Hydro to maintain a \$50 million insurance policy and keep \$2.5 million in a bank account or through a letter of credit. Blumenstock Direct, 3 TR 57. However, neither provision is “sufficient to cover ‘substantial’ environmental or operational liabilities.” MHRC Initial Br. at 64; *see* AG Initial Br. at 43-44.

Consumers Energy argues that the transaction creates a “comprehensive scheme of incentives” to prevent undesirable results. But as DNR effectively explained, “‘intentions’ and ‘incentives’ change regularly as circumstances change.” DNR Initial Br. at 8. Hence, even if the sale were the lowest cost option (which MHRC has shown it is not), transferring the dams to Confluence Hydro introduces far too much risk for the State of Michigan without nearly enough contractual safeguards to compel publicly optimal behavior. The Commission cannot rely on this

incomplete set of incentives, without the backing of key contractual provisions to protect the public.

**C. Consumers Energy Overstates the Costs of Decommissioning the Dams**

Central to the Commission’s analysis, Consumers Energy argues that the proposed sale and overpriced PPA is a better option than its continued ownership with relicensing or decommissioning. However, Consumers Energy reached this conclusion based on its own very high estimates for the cost of decommissioning. In its Initial Brief, Consumers Energy argues that “criticism of the Company’s decommissioning estimates are unreasonable and imprudently speculative” and defends its decision not to test sediment or work with regulators on more accurate estimates. Consumers Initial Br. at 16-21.

Consumers Energy and WSP, however, have much less decommissioning expertise than DNR’s Expert Witnesses, Lucas Trumble, who is EGLE’s top dam regulator, and Jessica Mistak, and MHRC’s expert Witness Martin Melchior. MHRC Initial Br. at 19. MHRC explains several reasons why Consumers Energy made unreasonable decommissioning cost estimates and failed to meet its burden of proof.

**First**, Consumers Energy attempts to disqualify other parties’ estimates on a technicality, arguing “that no party performed a rate impact calculation using their own revised decommissioning assumptions. So despite all of their work, no party has actually offered any evidence to show that approving the sale would have an adverse impact on customer rates.” Consumers Initial Br. at 16. While it is difficult to calculate an exact rate impact, MHRC, DNR, and ABATE each presented decommissioning cost estimates regarding decommissioning which compare apples to apples. MHRC Initial Br. at 28-29. Those costs naturally convert into rate impact, with or without the final analysis. For example, the Commission can easily determine

that DNR Witness Trumble’s estimate of \$937 million, which removed nearly \$600 million of unnecessary activities from the WSP estimate, would cost ratepayers less than WSP’s \$1.5 billion estimate. DNR Initial Br. at 28.

**Second**, the record plainly demonstrates that Consumers Energy and WSP did not test the quantity or composition of the sediment behind the impoundments. Blumenstock Cross Exam, 3 TR 137. Sediment management is the “key cost driver” of decommissioning costs, and Consumers Energy simply does not know the magnitude of sediment management involved in decommissioning the dams. MHRC Initial Br. at 18. In its Initial Brief, Consumers Energy oddly references sediment testing that was conducted ten years ago but then concedes that WSP did not consider or incorporate this information into its estimates. Consumers Initial Br. at 19. Those samples are irrelevant. The Company’s failure to test sediment is contrary to best practices as recognized and recommended by DNR and EGLE, and MHRC Witness Melchior. MHRC Initial Br. at 23.

Consumers Energy argues that it would “not have been reasonable” for the Company to test sediment due to cost concerns and the time it would take. Consumers Initial Br. at 19. But Consumers Energy conceded in discovery that it never even sought out bids for sediment testing. Ex. MHRC-74. As DNR explains, Consumers Energy’s “decommissioning estimates are not informed by real-world data or by a determination by any regulatory agencies of what would be required for decommissioning.” DNR Initial Br. at 27. DNR states that this is “enough for the Commission to conclude that Consumers has not met its burden of proof on this issue.” *Id.*

The Commission must weigh witnesses’ actual experience and credibility. On one side of the ledger, Consumers Energy and WSP rely on witnesses who have little or no relevant dam removal experience. Consumers Energy Witness Blumenstock has admittedly never managed or

participated in a dam decommissioning project. Blumenstock Cross Exam, 3 TR 137. Consumers Energy's hired consultant, WSP, has only limited experience. It provided a list of seven decommissioning projects, several of which did not seem to ever produce power, others for which WSP had limited involvement in the project, and none of which took place in Michigan. Ex. MHRC-82; Blumenstock Cross Exam, 3 TR 140-41.

On the other side, Michigan DNR's two expert witnesses and MHRC's expert witness have far greater experience. Michigan DNR presented expert testimony by Lucas Trumble of EGLE and Jessica Mistak of DNR. They both have extensive dam oversight experience and expertise. DNR opposes the sale, in large part due to the Company's inflated decommissioning estimates. DNR Initial Br. at 3. MHRC Witness Melchior participated in the Boardman River dam removal and the Pucker Street dam removal, both in Michigan, and has been involved with 67 more dam projects. Ex. MHRC-24. Based on his extensive experience with many dam removal and related projects, Melchior concluded that WSP's methods "create[] significant uncertainty" and do not align with his "practice standards developed over 25 years of dam removal experience." Melchior Direct, 3 TR 588-89.

Quite simply, MHRC's and DNR's experts' decommissioning and dam removal experience greatly outweighs that of Consumers Energy's witnesses with their very limited actual dam removal experience. The Commission should give the testimony and evidence of DNR and MHRC<sup>3</sup> considerably more weight when it comes to the decommissioning estimates.

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<sup>3</sup> MHRC notes that Consumers Energy critiques its use of the USGS Report decommissioning estimates. Consumers Initial Br. at 34-35. MHRC addressed these concerns in its Initial Brief. MHRC Initial Br. 27-28. To summarize, Witness Blumenstock lacks basic familiarity with the model or its capabilities. Blumenstock Cross Exam, 3 TR 152-53. While the Company states that the model does not describe sediment treatment or contain enough tall dams, both of those critiques are false or inapplicable. Presumably all 668 dams in the database dealt with sediment, and the power of the model is the aggregation of all of these example. Further, the USGS model (in addition to MHRC Witness Melchior's relevant experience) included far more "tall" dams than WSP did in its relevant experience. Ex. MHRC-82.

#### **D. Free-Flowing Rivers Produce Positive Economic Value For Local Communities**

Consumers Energy argues that its proposed sale is the only viable option to keep the dams and impoundments in place to provide economic value to communities, and that removing the dams would negatively impact communities. Consumers Initial Br. at 61. Consumers Energy's conclusion, however, is based on an incomplete analysis.

MHRC Witness Scuderi explained in his testimony that Consumers Energy artificially restricted the scope of the analysis and, thereby, limited the positive impacts of dam removal. MHRC Initial Br. at 71; Scuderi Direct, 3 TR 514. Consumers Energy directed Public Sector Consultants to cut off study of the impacts of dam removal after only one year, supposedly because further study would "introduce[] volatility and uncertainty in models." Consumers Initial Br. at 63. In response to discovery, Public Sector Consultants confirmed that Consumers Energy dictated the scope of the study. Ex. MHRC-76. For a different client, in a different Michigan dam removal context, Public Sector Consultants looked much further into the future and found *positive long-term impacts* of free-flowing rivers. Ex. MHRC-76; Scuderi Direct, 3 TR 544. MHRC Witness Scuderi's literature review and analysis in his testimony matches up with these Public Sector Consultants' findings of positive long-term impacts of free-flowing rivers in its other studies. MHRC Initial Br. at 71-72.

In analyzing the proposed transaction, the Commission should consider the impact on natural resources and the communities around the dams as part of the "public policy and interest" standard of the governing statute. MCL 460.6q(7)(e). Consumers Energy short-circuited the analysis here by imposing the artificial and arbitrary one year analysis of dam removal impacts, thus skewing the results. The Commission should rely on Witness Scuderi's analysis

demonstrating that in the medium and long term, existing uses get replaced and property values experience no impact or a slight net positive impact. Scuderi Direct, 3 TR 515-17.

**V. THE AG AND STAFF’S PROPOSED CONDITIONS WOULD NOT BE SUFFICIENT TO PROTECT THE PUBLIC AND POLICY INTERESTS**

MHRC, MPSC Staff and the Attorney General all agree that Sections MCL 460.6q(8) and (9) give the Commission legal authority to modify the sale, and that Consumers Energy has failed to justify its unwillingness to consider proposed modifications. Along those lines, MHRC agrees with Staff and the Attorney General that the proposed transaction allocates far too much risk to the State of Michigan, its ratepayers and taxpayers, rather than to the private equity firm. Lyon Rebuttal, 3 TR 696-97. While MHRC recognizes that Staff and the Attorney General’s proposed conditions could improve the deal, if accepted in full by Consumers Energy and Confluence Hydro, they still do not sufficiently protect the State of Michigan, its ratepayers and taxpayers, and the “public policy and interest.”

Staff and the Attorney General both support the Sale/PPA as the least cost option, but *only if* the Commission imposes significant conditions on it. AG Initial Br. at 60; Staff Initial Br. at 56; Coppola Direct, 3 TR 323-25; DeCooman Direct, 3 TR 856-57. Witness Coppola asserts that these conditions attempt to ensure that Hull Street Energy “will guarantee all environmental and other liabilities and obligations of Confluence.” Coppola Direct, 3 TR 323. In other words, a “parent guarantee.” Staff Initial Br. at 46-50; AG Initial Br. at 44. The AG included twelve conditions, in addition to the parent guarantee, which include Hull Street Energy contributing greater than its original \$250 million equity commitment to fund Confluence, several provisions related to Consumers Energy’s excessive cost recovery for transaction-related costs or contingencies, and limits on the PPA. AG Initial Br. at 58-60. Staff also recommended that the

Commission condition the sale on Confluence Hydro creating a community engagement plan for public access. Staff Initial Br. at 54.

Addressing the AG and Staff's conditions, MHRC's witnesses, experts in private equity transactions, risk and liability, compellingly explain why these conditions do not adequately protect ratepayers and the public. *See* MHRC Initial Br. at 43 n.14, 15. The testimonies of MHRC expert Witnesses U.S. Bankruptcy Court Judge Eugene Wedoff (ret.), the recent past-President of the American Bankruptcy Institute, and University of Michigan Ross School of Business Professor Thomas Lyon, who has authored several books about environmental risk, carefully explain why the proposed conditions do not sufficiently mitigate the risks of approving the sale of the dams to Confluence. Lyon Rebuttal, 3 TR 694-707; Wedoff Rebuttal, 3 TR 501-06.

**First**, Witness Wedoff and Witness Lyon questioned whether Staff and the AG's proposed guarantee "would be enforceable." Wedoff Rebuttal, 3 TR 504; Lyon Rebuttal, 3 TR 702. Relatedly, Witness Lyon expressed doubt about "who the parent company" really is. Lyon Rebuttal, 3 TR 701. Judge Wedoff explains:

Although Mr. Coppola's conditions provide that Hull Street Energy "will guarantee all environmental and other liabilities and obligations of Confluence," they provide no assurance that HSE's guarantee would be enforceable. In fact, as Mr. Coppola recognizes, any support that HSE contractually assumes "is only as good as the financial condition of the company backing it," and HSE only disclosed minimal information.

Wedoff Rebuttal, 3 TR 504 quoting Coppola Direct, 3 TR 318.

**Second**, Witness Professor Lyon testified that the proposed conditions would not close the loopholes in the proposed agreement because the proposed conditions:

inevitably fail to address all future possibilities including: [1] what would happen if HSE or its HSE Fund III limited partnership, which holds Confluence Hydro's assets, were to go bankrupt? [2] What if HSE, like its subsidiary, does not maintain sufficient assets to back up the guarantee? [3] What if HSE or HSE Fund III were

sold to another company? [4] What if HSE simply chooses not to relicense one or more of the dams and refuses to take the necessary steps to decommission the dam(s)?

Lyon Rebuttal, 3 TR 698. Staff's Brief repeatedly notes that these questions remain open because Consumers Energy and Confluence Hydro failed to answer them on the record. Staff Initial Br. at 42, 49, 51, 53, 54.

**Third**, Witness Professor Lyon testified that while Consumers Energy owns the dams, the Commission settles disputes and disagreements related to the dams. If Consumers Energy is allowed to transfer dam ownership to Confluence Hydro, then "unanticipated contingencies" will be "adjudicated by the courts... instead of the MPSC, *using the principles of commercial law* rather than the public service principles of the regulatory contract." Lyon Rebuttal, 3 TR 701 (emphasis added).

While they continue to support the sale with conditions, both Staff and the AG recognize in their Initial Briefs that Consumers Energy and Confluence Hydro failed to meaningfully respond to their concerns. The Attorney General states that "the Company's rebuttal testimony does not substantively address or rebut the concerns expressed by the Attorney General's witness." AG Initial Br. at 50. MPSC Similarly, Staff repeatedly laments Consumers Energy's failure to address its concerns that motivated Staff's proposed conditions. Staff pointed out that "Consumers provides little in the way of actual evidence or analysis to refute the concerns of Staff and other parties or address the merits of Staff's parent guarantee." Staff Initial Br. at 49. Staff also endorsed MHRC Witness Lyon's concerns, explaining that "[a]s stated by MHRC witness Lyon, the Commission should be wary of the ways such a contract may or may not be able to address the identified contingencies in determining whether to approve the proposed transaction...." Staff Initial Br. at 49-50.

As explained above, Consumers Energy relies entirely on magical thinking of a supposed “comprehensive scheme of incentives” to protect customers and the public from risks associated with private operation of the dams. Consumers Initial Br. at 10. MHRC, Staff, and the AG all explained why the lack of tangible contractual guarantees creates substantial and untenable risks. Staff and the AG proposed conditions to close those loopholes, which as explained by MHRC experts, fail to solve the problems that Staff and AG identified. Even if Confluence Hydro and Consumers Energy would entertain Staff and the AG’s proposals, the Commission cannot rely on the well-intended contractual conditions or the backstop of commercial law. They are inadequate and insufficient to protect the State of Michigan, ratepayers, taxpayers, and important public policy and interests.

**VI. THE 13 DAMS WILL NOT LAST FOREVER AND THEY DO NOT HAVE “PERPETUAL VIABILITY” AS CONFLUENCE HYDRO ASSERTS**

Consumers Energy and Confluence Hydro’s briefs paint an overly rosy picture regarding the dams, decommissioning, and what happens next. Confluence states in its brief that, it “assumes all future liabilities for...eventual relicensing or decommissioning.” Confluence Initial Br. at 6; *see also* Consumers Initial Br. at 8.

A disconnect exists between seller Consumers Energy’s view of what the transaction accomplishes, and what purchaser Confluence Hydro actually plans to do. Consumers Energy claims that part of the PPA price includes offloading “end-of-term cost risk” associated with the 13 dams, which, through discovery, it identified as decommissioning. Ex. MHRC-83; Blumenstock Cross Exam, 3 TR 156-57. But Confluence has demonstrated no intention of *assuming* the responsibility of decommissioning. MHRC Initial Br. at 65. In response to discovery, Confluence Hydro stated that it believes that “each of these projects has perpetual viability.” Ex. MHRC-53. Since Confluence, the private equity firm with 13 separate LLCs, has

no plans to decommission the dams, it will not be saving funds to decommission the dams. Ex. MHRC-54; Ex. DNR-35.

“Perpetual viability” for the dams has no credibility especially after the last two weeks of Michigan’s emergency with dam safety and flooding. For several years, DNR has explained to Consumers Energy that the “dams inevitably face retirement.” Ex. DNR-12 at 3. In the same exhibit, DNR’s Comments on Consumers Energy’s Hydro Power Strategy from 2022, the state agency went a step further, demanding transparency and clarity from the public utility:

The facilities that exist today cannot last forever and Consumers should be clear with local communities, all its ratepayers including those that are not in the local communities surrounding these projects, and the public at large effected by its dams by continuing to buffer that expectation.

Ex. DNR-12 at 6. In its Initial Brief, DNR repeated these same concerns, calling decommissioning an “eventuality that DNR and other resource agencies have spent more than 30 years trying to persuade Consumers and FERC to plan for. And it may be the appropriate solution for some of the 13 dams.” DNR Initial Br. at 24.

The Commission cannot ignore the strong evidentiary record that the 13 dams do not magically have “perpetual viability,” and that the owners will need to decommission some or all of the dams in the reasonably foreseeable future. Consumers Energy has been charging ratepayers for these future decommissioning costs. Coker Direct, 3 TR 226. The rate-regulated utility that has accrued decommissioning funds, with guaranteed cost recovery for prudent investments, is the right entity to transition these dams towards their end of life; not a private equity firm which lacks accountability to the State of Michigan and its people. Approving the sale to Confluence would be akin to authorizing an airplane to take off without landing gear. Confluence Hydro has no intention of landing the plane. Instead, one way or another, it will leave the State of Michigan to deal with the fallout.

## VII. CONCLUSION

As MHRC emphasized in our Initial Brief and in the argument above, Consumers Energy bears the burden of proof to demonstrate that its proposed sale meets all of the statutory standards under MCL 460.6q(7), and Consumers Energy has failed to do so in any reasonable manner. The extensive evidence in the record demonstrates that the proposed sale does not meet the five standards in the statute – it increases rates, makes the public less safe, subsidizes an out of state private equity firm at the expense of Consumers’ ratepayers, and is contrary to the public interest for a host of reasons.

As MHRC and DNR point out repeatedly, transferring the dams from a regulated public utility with responsibility to act in the public interest, to a private equity firm beholden to its investors, creates unacceptable risks. While Confluence finally spoke for itself in its very short Initial Brief, its lack of participation in this case still leaves the Commission relying on Consumers’ unsupported conjecture regarding the dams’ future after the sale.

The Commission should deny approval of Consumers Energy’s proposed sale, PPA and other related parts of this transaction. MHRC, DNR and other parties present better solutions that people of good will should work to achieve for the good of Michigan’s ratepayers, taxpayers and the rivers.

Respectfully submitted,



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**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 Hydroelectric	)	Case No. U-21985
Generating Fleet, related Power Purchase	)	
Agreement, and other relief.	)	

**PROOF OF SERVICE**

I hereby certify that a true copy of the foregoing *Reply 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* was served by electronic mail upon the following Parties of Record, this Monday, April 27, 2026.

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