STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE 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

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on June 10, 2026.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before July 1, 2026, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before July 15, 2026.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
For the Michigan Public Service Commission

James M. Varchetti

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June 10, 2026
Lansing, Michigan

James M. Varchetti
Administrative Law Judge

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STATE OF MICHIGAN

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FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On October 31, 2025, Consumers Energy Company ("Consumers" or "the Company") filed its application seeking approval, under MCL 460.6q, of its plan to sell its 13 hydroelectric dams to Confluence Hydro, LLC ("Confluence"), a subsidiary of private equity firm Hull Street Energy ("HSE"). The application also sought approval, under MCL 460.6j, of an associated 30-year power purchase agreement ("PPA") between the Company and Confluence for the electric output of the hydroelectric dams, approval of a financial compensation mechanism ("FCM") for Consumers for entering the PPA for renewable energy, accounting approvals related to the transaction, and other related relief.

On November 24, 2025, a prehearing conference was held before the undersigned Administrative Law Judge ("ALJ"), James M. Varchetti. The Company and Staff attended the hearing, and intervention was granted to the following parties: Michigan Attorney General Dana Nessel, The Michigan Department of Natural Resources ("DNR"), The Michigan Environmental Council ("MEC"), The Association of Businesses Advocating Tariff Equity ("ABATE"), Confluence Hydro, LLC ("Confluence"), Lake Allegan Association, Inc. ("LAA"), and Michigan Trout Unlimited, Michigan Steelhead & Salmon Fishermen's Association, Great Lakes Council of Fly Fishers International, Anglers of the Ausable, and the Michigan Hydro Relicensing Coalition, (collectively known as "MHRC"). Additionally, a Motion for Extension of Time was granted allowing the Grand Traverse Band of Ottawa and Chippewa Indians to file a petition for intervention on or before December 17, 2025, to allow the Tribe's governing bodies to have adequate time to discern whether to intervene in this matter.[1] At the hearing, the undersigned ALJ also entered a standard protective order included with the Company's application. A case schedule was adopted at the prehearing conference that governed filing deadlines and hearing dates.[2]

On December 12, 2025, the Township of Croton filed an untimely Petition for Leave to Intervene. On December 18, 2025, having previously contacted the parties and

[1] On December 17, 2025, the Tribe's legal counsel filed a letter in the docket for this case explaining that the Tribe opted not to seek intervention.

[2] MCL 460.6q(5) sets a 180-day timeframe for cases involving covered transactions, and Mich Admin Code, R 460.303(3) sets scheduling targets to meet this 180-day timeframe. However, the parties to this case mutually agreed upon an extended case schedule given the voluminous record and because of concerns that MCL 460.6q was not the only statute implicated given the company's interconnected requests for other relief involving approval of a power purchase agreement, accounting authority, and other matters.

provided a timeframe to file any objections, the undersigned ALJ entered a ruling granting the Township of Croton's Petition for Leave to Intervene.

On December 17, 2025, MHRC filed a motion to hold in-person hearings under Administrative Hearing Standard No. 2024-1. On December 19, 2025, the undersigned ALJ set the motion for a hearing on January 14, 2026, and directed the parties to file responses to the motion by January 9, 2026.[3] On January 2, 2026, Big Prairie Township filed an untimely Petition for Leave to Intervene. At the January 14, 2026, hearing, the undersigned ALJ granted the Petition for Leave to Intervene filed by Big Prairie Township and denied MHRC's motion to hold in-person hearings for the reasons stated on the record.[4]

On February 9, 2026, Staff, the Attorney General, DNR, ABATE, MHRC, LAA, Croton Township, and Big Prairie Township filed testimony in accordance with the case schedule. In turn, on March 2, 2026, the Company, ABATE, and MHRC filed rebuttal testimony. On March 23, 2026, a cross-examination hearing was held at which two of the Company's witnesses were cross-examined, and the parties bound into the record their respective testimony and exhibits discussed further in the section below providing an overview of the record.

On April 13, 2026, the Company, Staff, the Attorney General, DNR, Confluence, ABATE, MHRC, LAA, Croton Township, and Big Prairie Township filed initial briefs. In turn, on April 27, 2026, the Company, Staff, the Attorney General, DNR, Confluence,

[3] Several parties filed written responses, including The Township of Croton, Consumers, LAA, the Attorney General, DNR, and Staff.
[4] See 2 Tr 10, 23-24.

ABATE, and MHRC filed reply briefs. Some of the parties' briefs have both a public and a confidential version.

II.

OVERVIEW OF THE RECORD

The evidentiary record in this proceeding is contained in three public transcript volumes,[5] plus a confidential transcript,[6] which, when combined, total 1,322 pages of testimony.[7] The record also includes all the exhibits admitted at the evidentiary hearing which are delineated below, several of which also have a confidential version. The following discussion is not intended to catalog every conclusion reached or recommendation made by each witness, but to give a general overview of the issues addressed by each witness:

A. Consumers Energy

The Company introduced Exhibits A-1 through A-57 and presented the testimony of five witnesses:

Richard T. Blumenstock, The Company's Executive Director of Electric Supply Engineering, provided general testimony describing the proposed transaction and a description of the proposed transaction's various contract components and its effects. Mr.

[5] These volumes are the November 24, 2025, prehearing conference (cited as 1 Tr), the January 14, 2026, motion hearing (cited as 2 Tr), and the March 23, 2026, evidentiary and cross-examination hearing (cited as 3 Tr). Citations in this PFD to the third transcript are to the revised version filed on May 10, 2026, which redacted inadvertently included confidential information and also inserted the rebuttal testimony of Consumers witness Adam Monroe, which was inadvertently excluded from the first filed version. The revised third transcript used decimal-based page numbers for Mr. Monroe's later-inserted rebuttal testimony to preserve the original pagination of the transcript.

[6] This transcript is cited as "Conf 3 Tr" throughout this PFD.

[7] This page count relies on the pagination scheme of the filed transcripts, but there are several important caveats: (1) The confidential transcript duplicates some of the public transcript, simply without redactions, meaning not every page includes additional information; (2) the revised third transcript incorrectly continued the prehearing conference pagination instead of the pagination from the later motion hearing; and (3) the revised third transcript used decimal-based page numbers for Mr. Monroe's later-inserted rebuttal testimony to preserve the original pagination of the transcript.

Blumenstock also provided rebuttal testimony to respond to the critiques offered by other witnesses.

Jason R. Coker, the Company's Director of Regulatory Policy and Research, provided testimony regarding accounting, tax and rate effects of the sale, and regulatory requests associated with the proposed transaction. He also discussed the financial compensation mechanism associated with the proposed PPA. Mr. Coker also provided rebuttal testimony to respond to the criticism offered by other witnesses.

Adam J. Monroe, the Company's Executive Director of Hydro Generation, provided testimony regarding the employee transition plan; he also provided an assessment of the safety performance of Confluence and its owner, HSE. Mr. Monroe also provided rebuttal testimony to reply to the criticism offered by other witnesses.

Angela Thompkins, the Company's Vice President of Community and Media Relations and Chief Diversity Officer, provided testimony regarding the Company's community engagement strategy concerning the proposed transaction as well as the economic effects of the transaction on local communities.

Lauren E. Branneman, Director of Data Science and Economics at Public Sector Consultants (PSC), a nonpartisan public policy research and consulting firm, provided rebuttal testimony responding to criticism of the economic studies that PSC conducted on behalf of Consumers Energy.

B. Staff

Staff introduced Exhibits S-1.1 through S-5.3,[8] and presented the testimony of five witnesses:

Jonathan J. DeCooman, a Public Utilities Engineering Specialist in the Commission's Resource Optimization and Certification Section, provided testimony regarding Staff's review of the Company's proposed transaction and the Company's supporting business case.

Raushawn D. Bodiford, a Public Utilities Engineering Specialist in the Energy Cost Recovery & Generation Operations section, provided a review of the Company's cost of hydroelectric generation and the assumed replacement power cost.

Marceline A. Champion, a Public Utilities Engineer, in the Commission's Resource Optimization and Certification Section testified regarding a review of the Company's hydro

[8] Unlike other parties, Staff utilizes decimal-based designations for their exhibits. Staff presented Exhibits S-1.1 through S-1.26, S-2.0 through S-2.6, S-3.0 through S-3.3, S-4.1 through S-4.14, and S-5.1 through S-5.3.

solicitation process that resulted in the development of the proposed transaction with Confluence.

Jesse J. Harlow, Manager of the Commission's Renewable Energy section provided a review of the Financial Compensation Mechanism (FCM) proposed for the PPA.

Zachary A. Heidemann, a Public Utilities Engineering Specialist, in the Commission's Resource Optimization and Certification Section testified regarding the economics for long-term Hydro fleet operations.

C. The Attorney General

The Attorney General presented Exhibits AG-1 through AG-28, and she entered the testimony of one witness:

Sebastian Coppola, an independent business consultant specializing in matters involving energy and regulated utilities, provided testimony examining the company's financial modeling and business case. Mr. Coppola provided far-reaching recommendations regarding additional proposed terms and conditions for the Company's proposed transaction.

D. The DNR

The DNR introduced Exhibits DNR-1 through DNR-38 and presented the testimony of two witnesses:

Lucas A. Trumble, the Field Operation Engineering and Enforcement Section Manager of the Michigan Department of Environment, Great Lakes, and Energy (EGLE), testified regarding dam safety and regulation, existing risks related to the proposed sale, and potential negative effects on public health and safety if hydropower projects are not properly maintained.

Jessica L. Mistak, the DNR Fisheries Division's Habitat, Aquatic Species, and Regulatory Affairs Section Manager, provided testimony regarding dam safety regulation, existing risks associated with the proposed sale, and potential adverse effects on natural resources if hydropower projects are not properly operated and maintained.

E. ABATE

ABATE introduced Exhibits AB-1 through AB-14 and presented the testimony of one witness:

Brian C. Andrews, a consultant in the field of public utilities and a principal in the firm of Brubaker & Associates Inc., provided direct testimony regarding the company's economic modeling and business case for the proposed transaction. Mr. Andrews also provided rebuttal testimony that critiqued the economic modeling of other parties.

F. MHRC

MHRC introduced Exhibits MHRC-1 through MHRC-81 and presented the testimony of 14 witnesses:

Douglas B. Jester, the Managing Partner of energy and environmental consulting firm 5 Lakes Energy, and a former DNR hydropower licensing team manager, provided testimony regarding the Company's business case and modeling related to the proposed transaction. Mr. Jester also provided rebuttal testimony to address the issues raised by the Attorney General and Staff.

Thomas P. Lyon, the Dow Chair of Sustainable Science, Technology, and Commerce at the University of Michigan, provided testimony to explain the financial and environmental risks that are associated with the Company's proposed transaction. Mr. Lyon also provided rebuttal testimony to address issues raised by Staff and the Attorney General regarding proposed conditions to the transaction and its contractual terms.

Paul W. Seelbach, Volunteer Science Advisor to the Michigan Hydropower Relicensing Coalition and recently retired faculty member of the School for Environment and Sustainability at the University of Michigan, provided testimony regarding the unique and special nature of the ecological river systems affected by the dams.

Ralph J. Haefner, a contractor specializing in geology and hydrology with Michigan Trout Unlimited, provided testimony regarding his water quality analyses from several stream observation sites situated downstream of the dams that are the subject of this case.

Eugene R. Wedoff, a retired United States Bankruptcy Court Judge, highlighted potential harms to Consumers Energy customers and Michigan taxpayers if the proposed sale proceeds under current terms, including risks of higher electricity rates, potential state liability for damages, and unreimbursed property losses. Mr. Wedoff also provided rebuttal testimony to address contractual terms and conditions suggested by the Attorney General.

Ben Scuderi, Lead Economist for research firm Southwick Associates, evaluated the economic effect dam removal and provided a critique of the adequacy of existing site-specific and statewide economic studies utilized in the Company's application.

Martin Melchior, Technical Principal at river restoration engineering firm Inter-Fluve, provided an analysis of the dam decommissioning costs that the Company used to support its business case.

Tess Nelkie, former owner of an outdoor recreation business, board member of Anglers of the Au Sable, and member of Fly Fishers International and Trout Unlimited, provided testimony regarding the negative effects dams have on riverine recreation, fishing, and the environment. She also expressed skepticism concerning the sale of the dams to an entity with no connection to the local community.

Josh Greenberg, river-recreation related business owner and Acting President of Anglers of the Au Sable, provided testimony highlighting the value of the Au Sable River to surrounding communities and potential concerns about the sale of the dams.

Steven P. Sendek, a former DNR fisheries biologist, owner of a fisheries habitat consulting business, and member of Trout Unlimited, testified regarding the unique fishery opportunities on the Au Sable River and concerns regarding any potential new owner of the dams currently on that river system.

Thomas A. Buhr, a member of several organizations comprising the MHRC, testified regarding the unique fishing and recreation opportunities on the Au Sable River and the negative effects on dams on water temperature and cold-water fish species.

Brian Pitser, a member of Trout Unlimited and the Great Lakes Federation of Fly Fishers International, provided testimony about his experience with the recreational opportunities on the Manistee River and expressed concerns about the potential loss of public access or mismanagement that may occur if the dams are sold.

Nick Garlock, manager of an outdoor retailer and the Schrems West Michigan Trout Unlimited President, testified regarding his experience with recreational opportunities on the Muskegon River and concerns regarding the sale of the dams to an out-of-state firm.

Kevin Feenstra, a professional guide on the Muskegon River and member of Trout Unlimited and Fly Fishers International, testified regarding the conservation and recreation value of the Muskegon River and concerns about thermal pollution and maintenance concerns related to the proposed sale.

G. Lake Allegan Association, Inc.

LAA introduced two Exhibits, LAA-1 and LAA-2, and it presented the testimony of one witness:

Caroline Soodek, president of Lake Allegation Association, Inc. and a homeowner in the Lake Allegan community, testified in support of the Company's proposed transaction explaining that that Lake Allegan is vital to surrounding communities for recreation, local businesses, property values, tax revenues, and groundwater wells, all of which would suffer severe consequences if the Calkins Bridge Dam were removed.

H. Croton Township

Croton Township introduced Exhibit CT-1 and presented the testimony of one witness:

Morgan Heinzman, Township Supervisor of Croton Township, testified that removing the Croton dam would devastate Croton Township's economy, tax base, property values, recreation, and community identity, causing long-term negative effects on residents and businesses.

I. Big Prairie Township

Big Prairie Township introduced Exhibit BPT-1 and presented the testimony of one witness:

Ray Westgate, Township Supervisor of Big Prairie Township, testified that maintaining Hardy and Croton dams is essential for the Township's recreation-based economy, property values, tax revenues, and infrastructure. He also addressed how dam removal would affect the recently completed Dragon Trail, harming local tourism and recreation.

Only the testimony and other evidence that is necessary for a reasoned analysis of the disputed issues will be discussed in the following sections of this PFD. Certain portions of testimony may therefore be omitted from the discussion in the sections below; however, all of the testimony presented by the above parties has been reviewed and considered.

III.

LEGAL STANDARDS

Mergers and acquisitions, as well as the sale, transfer, encumbrance, or assignment of certain assets by a regulated utility outside of the normal course of business are governed by MCL 460.6q (Section 6q) along with the related set of

regulations promulgated by the Commission.[9] Section 6q requires a regulated utility to apply for approval from the Michigan Public Service Commission for any significant sale or transfer of the utility's assets, which covers the 13 hydroelectric dams that are the subject of this case. Section 6q provides that after notice and a hearing, and within 180 days[10] after filing the application, the Commission must enter an order approving or rejecting the proposed transaction.[11] In evaluating whether to approve the transaction, MCL 460.6q(7) states that the Commission "shall consider among other factors all of the following[:]"

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; and
e) Whether the action is otherwise inconsistent with public policy and interest.[12]

Significantly, Section 6q empowers the Commission to impose reasonable terms and conditions on the transaction to protect the regulated utility, including the division and allocation of the utility's assets.[13] Likewise, the Commission may also impose reasonable

[9] See Mich Admin Code, R 460.301 *et seq* (providing definitions, application filing requirements, clarifications, and further expounding upon the provisions of MCL 460.6q).
[10] As noted in the procedural history section of this PFD, the parties to this case agreed upon an extended case schedule.
[11] MCL 460.6q(5).
[12] MCL 460.6q(7)(a)-(e).
[13] MCL 460.6q(8).

terms and conditions on the transaction to protect the customers of the regulated utility.[14] In either event, a regulated utility has the option to reject the terms and conditions imposed by the Commission and to decline to proceed with the transaction.[15]

Additionally, as a necessary component of its proposed transaction, Consumers requests approval of a PPA under MCL 460.6j. The Commission generally reviews power supply matters such as PPA approval for reasonableness and prudence.[16]

A. Disputes Regarding Legal Standards

Before disputing factual issues, several parties raise disputes regarding the nature of this proceeding, the exclusivity (or lack thereof) of the five factors listed above in Section 6q, the proper interpretation of one of those factors, and the burdens of proof and persuasion.

1. Briefing

Consumers takes issue with parties arguing that it failed to carry its burden of proof regarding certain specific facts. Consumers states that Section 6q gives the Commission discretion to determine whether a utility asset sale should be approved subject only to a requirement that the Commission must consider, among other factors, the five statutory factors listed in MCL 460.6q(7). Thus, Consumers contends that the statute does not require proof of any specific facts and therefore does not create a burden of proof to prove any specific facts.[17] Consumers distinguishes proceedings under Section 6q from other

[14] MCL 460.6q(9).
[15] MCL 460.6q(8) and (9).
[16] March 15, 2024 Order in Case No. U-20496, p. 7 ("Consumers' application was filed pursuant to MCL 460.6j, which requires the Commission to review power supply decisions for reasonableness and prudence."); see also MCL 460.6j.
[17] Consumers brief, 19.

statutory proceedings before the Commission noting that unlike most other statutory proceedings Michigan law does not require merger or asset sale proceedings to be conducted as a contested case under the Administrative Procedures Act, makes no specific allowance for intervenors,[18] does not provide for discovery,[19] imposes no specific factual findings that the Commission must make, and assigns no explicit burden of proof.[20] Consumers contends that it voluntarily acquiesced to some amount of expanded procedures in this case because it understood that the Commission would not want to make its decision in the absence of adequate information and multiple perspectives; however, Consumers states that its acquiescence does not fundamentally change the nature of the Commission's determination.[21]

Consumers argues that Section 6q gives the Commission broad discretion to approve or reject a transaction without requiring specific factual findings, specific weighting of factors, or mandatory outcomes based on any particular factor.[22] Consumers asserts that, since the Commission has no statutory requirement to find any particular facts to make its decision, Consumers cannot be under any burden to prove any particular facts, particularly since some intervening parties were not even entitled as a matter of law to present contrary evidence in the case.[23] Consumers acknowledges that it bears the burden of persuasion in this case, i.e. the burden of convincing the Commission to

[18] Consumers notes that the only third-party participation specifically contemplated in MCL 460.6q is that the Attorney General and "interested parties" must be given the opportunity to "file comments with the commission" within 60 days after the utility's application has been filed. MCL 460.6q(4).
[19] Consumers notes that the statute simply requires the parties to the transaction to provide the Commission and the Attorney General access to documents and records related to the transaction. MCL 460.6q(6).
[20] Consumers brief, 19-20.
[21] Consumers brief, 20 n 3.
[22] Consumers brief, 21.
[23] Consumers brief, 21-22.

approve the transaction, but it distinguishes that burden from the nonapplicable burden of proving any particular fact.[24] Consumers also asserts that it does not have a burden to disprove the various claims put forward by intervening parties.[25]

Confluence presents arguments about the scope of the five factors listed in MCL 460.6q(7). Confluence argues that although the statute specifically contemplates that the Commission may consider non-enumerated factors, the Commission's decision must remain "anchored" in its duty to protect the utility and its ratepayers. This focus is reflected in MCL 460.6q(8) and (9), which allow the Commission to impose additional terms and conditions to safeguard the regulated utility or its customers. Confluence contends that issues beyond those statutory purposes fall outside the scope of the proceeding and the Commission's jurisdiction.[26] Confluence highlights that the Commission is a creature of the Legislature, possesses only powers granted by statute, and is not clothed with the power to make management decisions on behalf of utilities.[27] Confluence goes on to state that intervening parties presented evidence or arguments related to issues outside of the statutory factors or the Commission's jurisdiction, issues that are utility management decisions, or issues that fall within the purview of other regulators.[28]

Confluence also puts forward an interpretation of MCL 460.6q(7)(e) disputing Staff's statement that this factor addressing whether "the action is otherwise inconsistent

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[24] Consumers brief, 22.
[25] Consumers brief, 22.
[26] Confluence brief, 3.
[27] Confluence brief, 3 (citing *Union Carbide Corp v Pub Serv Comm*, 431 Mich 135, 148-149; 428 NW2d 322 (1988)).
[28] Confluence brief, 4-5 (highlighting testimony or arguments about property value and recreational effects, market valuation techniques, fraudulent transfer law, FERC's regulatory paradigm, and non-power scenarios for decommissioning).

with public policy and interest,"[29] essentially "serves as a catch-all" for evaluation of various considerations.[30] Confluence instead argues that this factor requires parties to first establish what Michigan's public policy or public interest is on a particular issue and then show that the proposed transaction is inconsistent with that public policy or interest.[31] Confluence suggests that, rather than showing inconsistency with existing public policy or interest, intervenors instead argue based upon what they believe public policy or interest should be.[32] Confluence further argues that that interests can be diverse and often conflicting, making it impossible for any proposal to satisfy all subsections of the public simultaneously. Therefore, Confluence asserts that "the statute requires that the public interest of the state, read broadly, not be inconsistent with the proposed transaction."[33]

In its reply, Staff asserts that attempts to limit the Commission's authority to consider potential effects of the proposed transaction on the people of the State of Michigan have not been supported. Staff asserts that MCL 460.6q(7) grants the Commission broad authority to consider "other factors" beyond those specifically listed in the statute. Staff argues that these other factors could extend to Staff's concerns about the transaction effectively terminating the Commission's oversight of the dams.[34]

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[29] MCL 460.6q(7)(e).
[30] Staff brief, 7.
[31] Confluence reply, 3.
[32] Confluence reply, 3.
[33] Confluence reply, 7.
[34] Staff reply, 2-3.

In her reply, the Attorney General argues that MCL 460.6q(7)(e) gives the Commission authority to make decisions based on public policy and interest considerations.[35]

In its reply, MHRC argues that Confluence misstates the Commission's broad authority when analyzing the transaction because MCL 460.6q(7) explicitly places its five listed factors "within a broader universe of issues" because the statute states the Commission shall consider them "among other factors."[36] MHRC argues that Confluence is correct that the Commission is a "creature of the Legislature," but the Legislature explicitly authorized the Commission to consider public policy and interest and expanded the scope of review beyond the five enumerated factors listed in the statute.[37] MHRC argues that the Commission should consider safety, fraudulent-transfer risks, and other public-policy concerns because FERC's inadequate enforcement of dam safety regulations and the State's potential exposure in cases of bankruptcy make these issues directly relevant under MCL 460.6q, including the duty to assess impacts on safe energy service. MHRC further contends that the statute gives the Commission broad discretion to weigh public-interest factors, and therefore the Commission should consider the public-policy evidence presented by parties like MHRC and the DNR.[38] MHRC emphasizes that caselaw gives the Commission wide latitude to weigh economic and public policy factors.[39]

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[35] Attorney General reply, 10.
[36] MHRC reply, 7 (quoting MCL 460.6q(7)).
[37] MHRC reply, 7-8 (citing MCL 460.6q(7)(e)).
[38] MHRC reply, 8.
[39] MHRC reply, 8 (citing *Attorney General v Pub Serv Comm*, 262 Mich App 649, 655 (2004), citing *Consumer Power Co v Pub Serv Comm*, 460 Mich 148, 156 (1999)).

2. Analysis

In resolving disputes about legal standards, this PFD first looks to Commission precedent. While several cases have been filed under Section 6q, virtually all have been resolved through settlement agreements. Only Case No. U-16366 was resolved through issuance of PFD and a subsequent Commission order, but that case was significantly smaller and less complex than the present one, and it provides limited guidance regarding the instant disputes about the unique requirements of Section 6q, the potential exclusivity of the statutory factors, the interpretation of public policy and interest, and the applicable burdens of proof and persuasion.

While past cases involving Section 6q have not specifically laid out the burdens of proof and persuasion, it is well-established that, in administrative proceedings, issues of fact are to be determined in accordance with the preponderance of the evidence standard with the burden of persuasion placed upon the party asserting the claim.[40] Indeed, the Commission has often restated this core principle of administrative law explaining that it applies the preponderance of the evidence standard in weighing conflicting evidence and requires a party seeking relief to prove its entitlement thereto by a preponderance of the evidence.[41]

In the context of Section 6q, the Company is correct that the statute does not mandate that the Commission make any particular finding of fact and instead requires that the Commission "shall consider among other factors" the five factors listed in MCL 460.6q(7). Accordingly, the Company is correct that the statute does not explicitly place

[40] See *BCBSM v Governor*, 422 Mich 1, 89; 367 NW2d 1 (1985).
[41] See, e.g. March 21, 2025 Order in Case No. U-21585, p. 4-5.

a burden on the Company to prove any specific statutorily mandated factual proposition. However, the Company correctly recognizes that as the party seeking relief, it bears the burden of persuasion which requires it to present some combination of facts, law, and reasoning pertinent to the statutory factors (or other factors) in order to support its entitlement to relief.[42] Accordingly, to the extent that the Company wishes to advance any factual proposition to support its entitlement to relief, it bears the burden of proving that proposition by the preponderance of the evidence. Similarly, Consumers is also correct that it does not bear a burden to disprove the competing claims of intervenors. However, because the Commission weighs competing evidence, the Company's failure to address opposing arguments may weaken its position.

Confluence's arguments regarding the exclusivity of the factors in MCL 460.6q(7) are somewhat unclear. While acknowledging that the statute permits the Commission to consider non-enumerated factors, Confluence nevertheless asserts that "[o]ther issues not explicitly enumerated in the statute are arguably beyond the scope of this proceeding and the Commission's jurisdiction under the statute," and Confluence further argues that the Commission's decision should not be predicated on issues beyond the statutory criteria.[43] However, the plain text of MCL 460.6q(7) makes it clear that the Legislature requires the Commission to consider the five factors enumerated therein "among other factors" such that the enumerated factors listed in that subsection manifestly cannot be exclusive.[44] Accordingly, the Commission can consider factors beyond those listed in the statute. This PFD agrees with the general sentiment expressed by Confluence that the

[42] See Consumers reply, 22.
[43] Confluence brief, 3.
[44] See MCL 460.6q(7).

Commission's decision should be informed by its statutorily implied duty to protect the utility and ratepayers;[45] however, this PFD does not necessarily agree that this means that other factors or considerations cannot or should not be evaluated given the plain language of the statute. Disputes related to how or whether to consider specific issues identified by Confluence are addressed in the specific subsections of this PFD in which they are implicated.

Finally, this PFD only partially agrees with Confluence's interpretation and application of MCL 460.6q(7)(e) regarding whether an action "is otherwise inconsistent with public policy and interest."[46] Confluence seems to apply this principle by focusing on whether an action is legal, concluding that if it is legal, it is not inconsistent with public policy.[47] Confluence overlooks the possibility that even lawful conduct might potentially run afoul of broader public policy or public interest concerns. Further, public policy or interest can be broadly viewed and may not always be clearly stated in the form of a law or regulation permitting or forbidding an action.

For example, in Case No. U-16366, the Commission found that a sale price was undervalued and therefore required a utility to accept a higher imputed value as a condition of the sale so that the transaction would not be inconsistent with public policy and interest.[48] Indeed, in a subsequent order in that case, the Commission described its

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[45] See MCL 460.6q(8) and (9) (allowing the Commission to impose reasonable terms or conditions on the transaction protect either the regulated utility or its customers).
[46] MCL 460.6q(7)(e).
[47] See Confluence reply, 4-5.
[48] See December 2, 2010, Order in Case U-16366, p. 14-15. Notably, the Commission later granted a petition for rehearing finding that there was insufficient evidence to support the imputed price and remanding for an evidentiary hearing and briefing to determine a reasonable imputed price. See April 26, 2011, Order in Case No. U-16366, p. 7-8.

position stating that it "indicated in [its previous order] 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."[49] This demonstrates that the Commission may find a lawful action (i.e. the sale at a specific price) inconsistent with public policy or interest when broader considerations warrant it. Confluence's specific argument regarding public policy, which primarily addresses concerns about the Commission losing jurisdiction over the dams, is addressed more fully in Part IV, Section C of this PFD, *infra*.

IV.

DISCUSSION

This PFD divides the discussion and analysis into six sections. First, Section A provides a general overview of the proposed transaction. Second, Section B addresses the transaction's effect on customer rates as required by MCL 460.6q(7)(a). Third, Section C addresses the transaction's effect on the safe and reliable provision of electrical service as contemplated by MCL 460.6q(7)(b). Fourth, Section D addresses public policy and public interest concerns as required by MCL 460.6q(7)(e). Fifth, Section E addresses proposed additional terms and conditions that the Commission could impose under MCL 460.6q(8) and (9). Finally, Section F provides an integrated analysis that recounts the ultimate positions taken by the parties and provides a recommendation for this case.

Sections related to MCL 460.6q(7)(c) (subsidization of non-regulated activity of the new entity in rates) and MCL 460.6q(7)(d) (effect on a utility's capital structure) are omitted because those concerns are not implicated in this case.[50]

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[49] April 26, 2011, Order in Case No. U-16366, p. 7-8.

[50] For the reasons stated in the Company's brief, this PFD agrees that these statutory concerns are not at issue in this case. See Consumers brief, 58-59.

While individual disputed topics are discussed in the section where they best fit, the concerns raised by the parties are multifaceted and often overlap, and testimony or arguments relevant to one disputed topic may also have bearing on many other topics. Disputed issues may also potentially fit into more than one section. By way of example, disputes regarding Confluence's financial ability to safely maintain the dams may affect both the safe provision of energy services (Section C) and may also raise public policy or public interest considerations (Section D). The organization of the PFD below is provided to structure the discussion; in analyzing claims and developing conclusions and recommendations, this ALJ considered all the evidence and arguments holistically.

A. The Proposed Transaction

Before exploring disputed topics, it is essential to provide the historical context of this case as well as a concise, albeit noncomprehensive, overview of the four-part transaction proposed by Consumers.

Consumers owns 13 hydroelectric dams located on the Muskegon River (Rogers, Hardy, and Croton), the Manistee River (Hodenpyl and Tippy), the Grand River (Webber), the Kalamazoo River (Calkins Bridge), and the Au Sable River (Mio, Alcona, Loud, Five Channels, Foote, and Cooke); further, these dams have an average age of over 100 years old and a combined nameplate capacity of roughly 132 MW.[51] These aging dams are significantly more costly to operate and maintain than other generating resources, and with FERC[52] licenses expiring within a decade, relicensing would require significant

[51] 3 Tr 43, 44.

[52] Referring to the Federal Energy Regulatory Commission, which is the federal agency that regulates various energy-related concerns including hydropower licensing.

capital expenditures to meet heightened safety and regulatory requirements.[53] In the Company's 2022 general rate case, Staff and other intervenors questioned whether the Company considered other options for the dams in lieu of making large-scale capital expenditures to relicense the facilities, particularly since any expenditures would have to be recovered through customer rates.[54] In settling that rate case, the Company agreed to conduct a disposition analysis of its hydroelectric generating fleet.[55]

The disposition analysis, conducted by third-party engineering firm WSP, evaluated whether the Company should relicense, decommission (fully, partially, or retain as non-generation), or divest the dams in question.[56] The completed WSP study (Exhibit A-8) contained a nuanced analysis of the options for each dam, and it ultimately recommended decommissioning for the Hardy and Rogers dams with either divestment or some form of decommissioning recommended for most other dams.[57]

Now, having completed a disposition analysis and consulted with affected local communities, the Company proposes to divest all 13 hydroelectric dams by selling them to Confluence Hydro, LLC ("Confluence"), a subsidiary of the private equity fund Hull Street Energy Partners III, LP, which is owned by Hull Street Energy ("HSE"), for a total purchase price of $13 (i.e., $1 per facility).[58] The Company contends that its economic modeling demonstrates that its proposed transaction will cost less than decommissioning the dams while preserving their associated impoundments and the economic benefits

[53] 3 Tr 44.
[54] 3 Tr 44; See generally Case No. U-21224.
[55] 3 Tr 44; January 19, 2023, Settlement Agreement in Case No. U-21224, pp. 4-5.
[56] See Exhibit A-8
[57] See generally Exhibit A-8, p. 7; See also 3 Tr 45.
[58] 3 Tr 52.

they provide to adjacent communities.[59] The Company's proposed transaction is structured through four interdependent agreements:[60]

(1) a Purchase and Sale Agreement (PSA);[61]
(2) a Power Purchase Agreement (PPA);[62]
(3) a Regulatory Disallowance Agreement (RDA);[63] and
(4) an Environmental Indemnity Agreement (EIA).[64]

First, the PSA is the agreement that effectuates the transfer of the dams, associated equipment, related real estate holdings, and related liabilities from the Company to Confluence. While the $13 sale price under the PSA is nominal, the key value for the Company lies in transferring existing and future liabilities associated with the dams to Confluence.[65] While Confluence is the purchaser, each of the 13 dams would ultimately be owned by a separate limited liability company (LLC), each being a subsidiary of Confluence.[66]

Second, the Company proposes to enter a 30-year PPA to purchase energy, capacity, and renewable energy credits from the dams. The initial base rate under the PPA is $160/MWh with contractual adjustments that could potentially escalate that initial base rate up to $165/MWh; additionally, the PPA calls for a 2.5% escalation of the base

[59] 3 Tr 45.
[60] 3 Tr 51.
[61] Confidential Exhibit A-1.
[62] Confidential Exhibit A-2. The PPA is formally entitled "Renewable Energy Purchase Agreement Between Consumers Energy Company and Confluence Hydro, LLC."
[63] Exhibit T attached to Confidential Exhibit A-1.
[64] Exhibit M-1 attached to Confidential Exhibit A-1.
[65] 3 Tr 52; see also Confidential Exhibit A-1.
[66] See, e.g. October 31, 2025 Application, Attachment C "Joint Application for Approval of Transfer of Licenses" (describing the proposed FERC license transfers from Consumers Energy Company to the individual Confluence LLCs). See also Exhibit DNR-34, p. 4-5 (confirming that Confluence established unique LLCs for each of the 13 dams).

rate every 12 months.[67] The Company asserts that the high PPA price is "designed to ensure Confluence will have sufficient annual revenues to fund capital and maintenance" such that Confluence will be incentivized to appropriately maintain the dams.[68] The Company also asserts that Confluence has access to equity from its parent, HSE, which would also provide funding for capital intensive improvement projects.[69] Consumers notes that the PPA price represents not just the value of products purchased, but also the transfer of all liabilities, including the avoidance of significant capital expenditures and eventual decommissioning obligations.[70] Notably, Consumers would receive a financial incentive, i.e. a financial compensation mechanism ("FCM") for entering into a PPA for renewable energy from a non-affiliated entity under MCL 460.1028(8).[71] The total compensation that Consumers Energy would receive from this FCM, if calculated under its proposed methodology, would total roughly $270 million over the course of the 30-year PPA.[72]

Third, the RDA requires the Company to compensate Confluence if the Commission issues a future order disallowing recovery of payments made under the PPA, leading Confluence to terminate the PPA. Upon such termination, Confluence may demand payment under the RDA, and "the Company would be required to pay an amount equal to the lesser of the "Economic Loss Payment" and $250,000,000, plus any

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[67] 3 Tr 53. Note that the initial PPA price is subject to upward price adjustments based upon certain conditions related to, among other items, spillway-related projects at the Rogers and Hardy dams. See 3 Tr 53-54. See also Confidential Exhibit A-2 (the PPA).
[68] 3 Tr 47.
[69] 3 Tr 47.
[70] 3 Tr 41.
[71] 3 Tr 59.
[72] 3 Tr 879; See Also Exhibit A-4, column (e).

outstanding amounts due under the PPA."[73] Once these payments were made, both parties would generally waive further claims subject to limited rights to sue and counterclaim.[74]

Finally, the EIA ensures that Confluence will indemnify the Company indefinitely against all past, present, and future environmental liabilities related to the 13 dams. The EIA is to be backed by $2.5 million in escrowed funds (or a letter of credit in that amount) subject to unlimited replenishment, pollution legal liability insurance coverage, and joint and several liability from Confluence and all its individual subsidiaries.[75]

B. Effect on Customer Rates under MCL 460.6q(7)(a) and Financial Matters

Whether the proposed transaction would adversely affect customer rates depends on the overall costs of the alternative options the Company can pursue, the parties' disputes over land use and land value,[76] and the terms of the PPA and its associated FCM. Other financial issues may also be addressed in this section. Each issue will be discussed below:

1. Business Case Modeling

The costs associated with each alternative examined by the Company and the intervenors provide the basis for assessing how the proposed action would affect customer rates, which is a required consideration under MCL 460.6q(7)(a).

Mr. Blumenstock testified that the Company developed three business case outlooks for the dams: (1) sale to Confluence with a related PPA; (2) decommissioning;

[73] 3 Tr 55-56.
[74] 3 Tr 56.
[75] 3 Tr 56-57.
[76] Insofar as it has a financial effect on the alternative courses of action.

and (3) relicensing and continued ownership by the Company.[77] He explained that the business cases compared annual costs using a set of assumptions and that the costs were converted to a net present value (NPV) to allow for a relative comparison of the outcomes. He stated that the Company included a variance analysis to ensure that the results reflect a reasonable range of potential outcomes.[78] He explained that Exhibit A-3 contained common assumptions used in all three business cases including replacement power costs of $79/MWh based upon a solicited bid for a clean energy PPA in 2024, and zero percent inflation for replacement power (reserving inflation or cost escalation for replacement power in a variance analysis).[79] The ending evaluation year was 2086 to reflect the full lifecycle of the dams after receiving a 50-year license renewal expiring in 2084, with two additional years to account for decommissioning activities.[80]

Mr. Blumenstock specified that Exhibit A-7 presented the Company's variance analyses to evaluate the potential range of outcomes for each disposition scenario by adjusting variables to illustrate both high- and low-end effects on the NPV of costs identified in Exhibits A-4, A-5, and A-6 (which contained inputs and calculations for the sale, decommissioning, and relicensing scenarios).[81] He provided specific details regarding the adjustments made in each sensitivity case.[82] He concluded that "It is clear from the graphical variance summary [presented in Exhibit A-7] that selling the Facilities

[77] 3 Tr 57.
[78] 3 Tr 57-58.
[79] 3 Tr 58.
[80] 3 Tr 60.
[81] 3 Tr 65.
[82] 3 Tr 64-67.

is the lowest cost option. It also has the least cost-risk based on the relatively narrow range of costs that result after applying variation analysis."[83]

Mr. Coker performed a revenue requirement analysis for the business cases based upon costs provided by Mr. Blumenstock, and the analysis confirmed that the sale scenario was the least costly option.[84] Mr. Coker also analyzed the effect of the three scenarios on customer rates to confirm that the sale scenario had the least effect.[85]

A review and analysis of the Company's modeling and the modeling of other parties follows.

a. Sale Business Case

i. Testimony

Mr. Blumenstock explained that Exhibit A-4 contained the inputs and calculations for the sale business case including transaction costs for the sale (including legal fees and employee separation costs), replacement power, and PPA costs.[86] Mr. Coker testified that the sale case required Consumers to spend about $20 million to upgrade interconnection equipment at the hydro substations to meet modern safety standards when transferring the dams to a new owner.[87] He explained that the Company requested a determination from the Commission that these future costs are recoverable in base rates in future cases subject to a reasonableness and prudence review.[88]

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[83] 3 Tr 67.
[84] 3 Tr 234.
[85] 3 Tr 236-237.
[86] 3 Tr 61.
[87] He explained that Consumers would have eight years to complete the upgrades, which are required because that the substation units "are grandfathered and have not been upgraded to modern interconnection standards." 3 Tr 232.
[88] 3 Tr 232.

The results of the Company's NPV modeling for the sale case provide a range of results from $1.154 billion (low) to $1.378 billion (high) with a base case of $1.252 billion.[89]

Mr. DeCooman raised issues regarding the Company's sale scenario. He identified two issues with the Company's assumed replacement power costs: (1) relying on a single, unrepresentative all-source RFP bid to estimate long-term replacement power costs; and (2) incorrectly neglecting to adjust the replacement power cost for inflation to represent real dollars.[90] He stated that the first error could be addressed with a proper sensitivity analysis and the second must be corrected to avoid underestimation of costs.[91] Mr. DeCooman testified that Staff addressed these errors in its updated business case addressing the proposed sale.[92] Staff's sale business case also extended the length of the analysis to 2098[93] and added the $11.619 million costs associated with relocating substations that serve the Hodenpyl and Webber dams, which would be necessitated by the sale.[94]

Mr. Heidemann further testified that substation interconnection or relocation costs totaling $35.454 million should be included in the sales case because they are only being incurred because of the sale.[95]

Mr. Bodiford calculated the Company's 10-year average of hydropower PPA costs and found that it was approximately $71.96/MWh, suggesting that while the Company's

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[89] Exhibit A-7.
[90] 3 Tr 816-817.
[91] 3 Tr 818.
[92] 3 Tr 818.
[93] It appears that this was done to align the timeframe with Staff's Updated Relicensing Business Case, which itself extended the timeframe to provide for the realistic timing of dam decommissioning and removal at the end of that scenario. That extended timeframe contrasted with the Company's scenario, which compressed decommissioning of all dams into a two-year timeframe. See 3 Tr 60.
[94] 3 Tr 837; See Exhibit S-1.19 (Staff's updated Sale Business Case).
[95] 3 Tr 894-895.

replacement power cost of $79/MWh is "reasonable . . . it is not a 'conservative assumption' for scenarios requiring replacement power."[96] Mr. Bodiford testified that, given the Company's $79/MWh replacement power cost and the initial PPA price with annual escalation, the Company valued the avoided liabilities in the sale and PPA scenario at $1.80-1.95 billion depending upon the initial price of the PPA.[97]

The results of Mr. DeCooman's NPV modeling for the sale case provide a range of results from $1.314 billion (low) to $1.398 billion (high) with a base case of $1.344 billion.[98]

Mr. Coppola testified that he performed an analysis of the Company's sale business case, and he made the following adjustments: (1) reduced the purchase power rate after the end of the 30-year PPA from $79/MWh to $73/MWh; (2) used a PPA market rate of $73/MWh instead of $160/MWh when calculating the FCM; and (3) reduced sale transaction closing costs, including employee retention and severance costs, to levels he deemed reasonable.[99] Regarding replacement power costs, Mr. Coppola explained that the Company failed to produce documentation to support the $79/MWh rate, so he used $73/MWh which was the market rate supported by four PPAs the Company signed in 2025.[100] Regarding the FCM, he also proposed using a $73/MWh rate (among other proposed modifications to the FCM discussed in Section B(3) of this PFD, *infra*) because

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[96] 3 Tr 918.
[97] 3 Tr 919. Recall that the initial PPA price before annual escalation could be as low as $160/MWh or as high as $165/MWh depending upon certain contractual cost escalators related to projects at the Hardy and Rogers dams.
[98] See Exhibits S-1.19 (Staff's updated sale business case) and S-1.22 (Staff's updated variance analysis).
[99] 3 Tr 293.
[100] 3 Tr 295-296.

the $160/MWh rate is not a market rate.[101] Mr. Coppola also explained that he reduced excessive employee retention bonuses and severance payments by $6.4 million, additional employee costs by $4.9 million, and questionable internal closing costs by $1.6 million.[102]

The results of Mr. Coppola's modeling for the sale business case resulted in a NPV cost estimate of $1.169 billion.[103]

Mr. Andrews performed ABATE's analysis of the sale & PPA case updated to include Staff's escalated replacement power costs, which resulted in a cost estimate of $1.309 billion.[104]

Mr. Jester examined the Company's business case by breaking it down to consider its reasonableness for each individual dam (instead of on a fleetwide basis) while still using the same data as the Company. He explained his methodology for disaggregating the business case data,[105] and discovered that, using the Company's data, it still resulted in a recommendation to sell most of the dams.[106] However, the results of Mr. Jester's own modeling of the sale case, which included, among other items, an adjustment for land value involved in the sale (discussed separately in Section B(2) of this PFD, *infra*), resulted in a NPV cost estimate of $1.421 billion.[107]

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[101] 3 Tr 296-297.
[102] 3 Tr 300-305 (Note that these costs are addressed in more detail in Section E(9) of this PFD regarding proposed additional terms and conditions for the transaction).
[103] Table B at 3 Tr 294.
[104] 3 Tr 382.
[105] 3 Tr 608-612.
[106] 3 Tr 615.
[107] 3 Tr 637 & 638.

In rebuttal, Mr. Blumenstock acknowledged that the $79/MWh cost of replacement power was based upon a single recent bid, but he contended that it provided a factual basis for the assumption. He also acknowledged that the Company did not apply inflation to the replacement power cost in its base business case scenarios, but he added that an inflation factor was applied to the sensitivity analysis to be sure that inflation was considered.[108] Mr. Blumenstock disagreed with Mr. Bodiford's methodology used to estimate replacement power costs at roughly $72/MWh. He explained that Mr. Bodiford averaged 10 years of PPA rates without escalating each year's PPA rate to a common year to reflect cost inflation. After correcting for this by escalating to the year 2027 (the start of the business case) and adding 2% inflation, he asserted that the average in 2027 dollars was $82.79/MWh, which is higher than the Company's assumed $79/MWh.[109]

Mr. Blumenstock also rejected Mr. Coppola's use of $73/MWh as the basis for replacement power costs after the PPA expires. He explained that Mr. Coppola derived that figure from four solar PPAs the Company signed in 2025, but he contended that solar PPAs are inappropriate comparators because solar and hydro facilities differ fundamentally in operational characteristics, output patterns, and capacity accreditation.[110] He explained that relying on a $73/MWh solar-based replacement power ignores capacity value, and declining solar capacity accreditation in MISO[111] could require

[108] 3 Tr 82.
[109] 3 Tr 78-79.
[110] 3 Tr 130-131.
[111] Midcontinent Independent System Operator (MISO) is the regional transmission organization that plans, operates, and manages the electric grid across much of the Midwest to ensure reliable, cost-effective service for utilities and their customers.

costly additional zonal resource credit purchases or storage to match the capacity provided by hydroelectric facilities.[112]

Mr. Blumenstock also disputed Mr. Bodiford's contention that the Company valued the avoided liabilities in the sale and PPA scenario at $1.80-1.95 billion given the $79/MWh cost of replacement power and the $160/MWh initial PPA price. He stated that the numbers presented by Mr. Bodiford were in nominal dollars, not real dollars, and that the $1.80 billion difference is $622 million when corrected to real (2027) dollars.[113] Further, Mr. Blumenstock opined that the $622 million figure should not be considered to be the liabilities avoided by Consumers because the value of the liabilities could be higher.[114]

Mr. Blumenstock disagreed with Mr. Heidemann's testimony that substation interconnection and relocation costs should be included in the sale business case because those upgrades are necessary to resolve longstanding operational and safety issues from comingled assets and would have been required eventually regardless of the sale. He adds that even if the full $35.45 million cost is included, the sale option remains significantly less expensive than decommissioning.[115]

Mr. Blumenstock rejected Mr. Jester's NPV analysis of the dams on an individualized facility-by-facility basis because the proposed sale and 30-year PPA were negotiated on a single-portfolio basis with shared O&M, compliance, and overheads. He explained that analysis on an individualized basis ignores these portfolio dependencies,

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[112] 3 Tr 131.
[113] 3 Tr 79.
[114] 3 Tr 80.
[115] 3 Tr 90.

distorts economics, and disregards economies of scale and shared fixed costs.[116] He added that fleet-level analysis better reflects true costs because many operational, compliance, labor, and infrastructure expenses are shared across the entire portfolio, and breaking them into per-dam NPV estimates understates these fixed and common costs as well as true transaction costs.[117]

In his rebuttal, Mr. Jester specified that he disagreed with Staff regarding the inflation adjustment for the cost of replacement power in two respects. First, he explained that it was unlikely that Consumers would acquire replacement power annually and would instead build generating resource or enter a long-term PPA such that costs would be levelized. Second, he asserted that applying a 2% annual inflation rate to the cost of replacement power was inappropriate because the cost of power generation is declining in real dollars. Mr. Jester opined that this error in the treatment of replacement power costs "invalidates Staff's revisions of Consumers Energy's business case analyses, specifically of the Sale and PPA scenario and the Decommissioning scenario."

Mr. Jester testified that the magnitude of Mr. Coppola's cost changes to the sale scenario were not large enough to be material to whether the Commission should accept the sale.[118] He added that Mr. Coppola neglected to adjust for value of the land that is proposed to be transferred from Consumers to Confluence, which could total up to $168 million in value.[119]

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[116] 3 Tr 117.
[117] 3 Tr 117.
[118] 3 Tr 647.
[119] 3 Tr 655.

ii. Briefing

In briefing, the Company addressed concerns regarding replacement power costs from Staff and the Attorney General by reiterating the same points made by Mr. Blumenstock in his rebuttal testimony.[120]

The Company rejects Staff's contention that substation relocation and interconnection upgrade costs should be included in the sale business case because they were necessitated by the sale. Instead, the Company repeats Mr. Blumenstock's contention that these upgrades and expenses would have occurred regardless of the sale such that the sale affected only the timing, but not the need, for those costs.[121]

The Company also rejects MHRC witness Jester's business case analysis premised upon examining economics and proposed actions on a facility-by-facility basis instead of on a fleet-wide basis. The Company's argument echoes the points made in Mr. Blumenstock's rebuttal testimony.[122]

In its brief, Staff acknowledges that Consumers considered inflation in its replacement power cost as a sensitivity in Exhibit A-7; however, Staff opined that doing so only in the Company's high-cost sensitivity analysis was inappropriate and made the effect of inflation more difficult to understand. Staff asserts it is more appropriate to assume inflation in a base scenario and vary inflation as part of a sensitivity analysis.[123]

Staff acknowledges the Company's arguments countering Mr. Bodiford's calculation regarding replacement power costs, and "Staff concedes that escalating

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[120] See Consumers brief, 36-38.
[121] Consumers brief, 46-47.
[122] See Consumers brief, 47-49.
[123] Staff brief, 21-22.

Consumers 10-yr average PPA costs for hydro power would result in a more apples-to-apples comparison of total PPA costs as proposed by the Company."[124] However, Staff disputes the Company's contention that the difference in price between the PPA contract and the market value estimate (when expressed in real 2027 dollars) is only $622 million (potentially representing the value of avoided liabilities in the sale and PPA).[125] Staff argues that the Company is wrong to claim the cost difference is only $622 million because, once the 10-year average hydro power cost is properly restated in 2027 dollars and applied over the full 30-year term, the difference is actually about $1.6 billion.[126] Staff explains that this gap represents the value of all non-power liabilities Consumers is transferring to Confluence, consistent with the Company's own testimony that the PPA price includes both energy products and the value of shifting liabilities. Staff concludes that the Company's objections are largely semantic because the remaining cost difference still reflects the full bundle of liabilities that Consumers assigns to Confluence, regardless of how the components are labeled.[127]

Staff rejects the Company's argument that relocation of the Hodenpyl and Webber substations would have occurred regardless of the sale because it is contradicted by other statements made by the Company that indicate the relocations were necessitated by the sale.[128] Staff also argues that the $35.45 million in substation interconnection and relocation costs must be included in the sale's net present value because they are triggered directly by transferring the hydro assets to Confluence and separating

[124] Staff brief, 60.
[125] Staff brief, 61.
[126] Staff brief, 62.
[127] Staff brief, 64.
[128] Staff brief, 25 (citing Exhibit S-23, p. 3).

previously comingled facilities. Staff also contends that Consumers' claim that these upgrades would have occurred "eventually" is unsupported, and the fact that the interconnections must now meet third-party standards further shows that the costs arise specifically because of the sale.[129] Accordingly, Staff maintains that substation relocation and interconnection costs must be included in the sale case.

Staff contends that "[t]he critiques from MHRC witness Jester, while not factually incorrect, do not undermine Staff's assumptions around inflation as it's impossible to say which view of the future is more likely to occur."[130] Staff asserts it applied a standard 2% inflation rate to all costs because long-term projections are uncertain and vary widely across sources. Staff opines that since future contract terms, lengths, and prices for replacement power are unknown, witness Jester's reliance on a single forecast and assumption of flat costs is unfounded and should be disregarded.[131]

Staff acknowledges that evaluating individual dams has merit as stated by MHRC witness Jester, but Staff states that many facilities operate as interconnected river systems, making an analysis based upon dams on a river system equally reasonable. Staff argues that the Commission's decision concerns the sale of the entire 13-facility fleet to Confluence, so a facility-by-facility business case is not necessary to address Consumers Energy's primary request.[132]

In her brief, the Attorney General refutes the Company's arguments that a $73/MWh replacement power cost based upon recent solar PPAs is unreasonable. The

[129] Staff brief, 56-57.
[130] Staff brief, 22.
[131] Staff brief, 22-23.
[132] Staff brief, 23.

Attorney General argues that: (1) it reflects current market rates for solar energy; (2) Mr. Blumenstock confirmed that much of the Company's future generation will come from solar facilities making the solar rate relevant; (3) the capacity accreditation in MISO for a 100 MW facility is nearly equal for solar and hydro facilities.[133] The Attorney General rejected insinuations from the Company that MISO may dramatically change solar capacity accreditation because speculative future solar capacity estimates are improper given that the current $73/MWh rate is based on existing contracts and market conditions, and an extreme 2% accreditation level is unlikely and would make future solar development impossible.[134]

The Attorney General also responds to MHRC witness Jester's criticisms of Mr. Coppola's modeling stating that while Mr. Coppola's analysis may not have been as granular as some parties' witnesses, his approach was not unreasonable. The Attorney General then highlights Mr. Coppola's experience in the utility industry and as an independent consultant.[135]

MHRC's briefing repeats Mr. Jester's criticisms of Staff's handling of replacement power costs, and critiques Staff and the Attorney General for failing to include land value in their analysis of the sale.[136]

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[133] Attorney General brief, 16-17.
[134] Attorney General brief, 17.
[135] Attorney General brief, 54.
[136] MHRC brief, 34-35, 36.

iii. Analysis

Several topics of contention emerge from the parties' numerous concerns about the Company's sale business case, and each point of concern will be analyzed further below.

First, the parties devote substantial argument to replacement power costs, which affect both the sale and the decommissioning modeling scenarios. This PFD agrees that the Company's reliance on a single RFP to estimate these costs is problematic, as is its use of inflation only in a high-end sensitivity case. However, this PFD also agrees with MHRC witness Jester that the Company would likely build new generation or secure a long-term PPA, which would levelize replacement power costs and diminish the need for an inflation adjustment. Ultimately, any estimate of replacement power costs decades into the future is inherently uncertain. A reasonable range of supported estimates should therefore be considered, ideally through a sensitivity analysis, although only the Company and Staff provided such analyses. This PFD does not attempt to establish a definitive replacement power cost for use in modeling; rather, it recommends evaluating the parties' proposed estimates with an understanding of the strengths and weaknesses of each approach.

Second, Staff and the Company disagree on whether substation relocation and interconnection upgrade costs should be included in the sale scenario. For the reasons offered by Staff, this PFD concludes that these costs should be included. The relocation costs appear to arise solely from the sale to a third party. Further, while the Company contends that it would have undertaken interconnection upgrades eventually, it provided no timeframe or evidence showing such upgrades were imminent or likely at any time in

the near future. Thus, both costs appear to be incurred either solely or primarily because of the sale and should therefore be included in the sale scenario.

Third, the Company and MHRC dispute the value of MHRC witness Jester's modeling, which evaluates each dam individually rather than on a fleet-wide basis. This issue affects all of Mr. Jester's scenarios, not just the sale scenario. This PFD agrees with Consumers that an individualized analysis can overlook economies of scale and shared fixed costs inherent in operating a fleet of dams. Still, evaluating dams individually also has benefits and provides useful insight into each dam's economics. Accordingly, this PFD finds that Mr. Jester's modeling should be considered, with appropriate attention to the strengths and limitations of an approach that disaggregates the economic data.

Fourth, the Company and Staff devote significant argument to the value the Company assigns to avoided liabilities under the sale scenario, given its $79/MWh replacement-power estimate and the PPA's initial minimum price of $160/MWh. However, the purpose of this dispute is uncertain. The Company explained that the PPA price was negotiated and does not break out components such as the value of energy, capacity, or avoided liabilities. One might infer that any amount above replacement-power costs represents the Company's implicit valuation of avoided liabilities, but that figure depends entirely on the replacement power cost assumption, which varies widely among the parties as discussed previously. As such, the exact value of avoided liabilities cannot be isolated and is dependent upon estimates of the value of energy and capacity.

In sum, this PFD concludes that the sale scenario has a relatively narrow range of cost estimates given that there are limited variables that can alter its total cost. Further, these variables (such as the cost of replacement power, amount of energy produced by

the dams, and the starting price of the PPA) are either subject to an upper bound or can fit within a reasonable range of values. Further comparative analysis of the different business cases takes place in subsection (B)(1)(e) of this PFD, *infra*.

b. Decommissioning Business Case

i. Testimony

Mr. Blumenstock stated that Exhibit A-5 contained inputs for the decommissioning scenario with decommissioning costs based upon a 2025 estimate from engineering firm WSP provided in Exhibit A-9.[137] Mr. Blumenstock reported that the Company increased base estimates from WSP by 40% to account for overhead, engineering services, required studies, permitting, internal project management, and legal fees ("owner's costs adder").[138] He added that the Company further increased decommissioning costs based upon a facility-specific evaluation for potential environmental uncertainties ("environmental risk adder").[139] The results of the Company's NPV modeling for the decommissioning business case provide a range of results from $1.336 billion (low) to $1.899 billion (high) with a base case of $1.777 billion.[140]

Mr. DeCooman took issue with the Company's decommissioning scenario. Mr. DeCooman explained that there have been multiple iterations and updates to decommissioning costs for the Company's hydro fleet since 2020. He provided a list of decommissioning studies and their results starting with the Mead & Hunt 2020 Study, Kiewit's 2021 Study (for only 3 dams), WSP's 2023 roadmap (Exhibit A-8), WSP's 2025

[137] 3 Tr 62.
[138] 3 Tr 62.
[139] 3 Tr 62.
[140] Exhibit A-7.

decommissioning cost estimates (Exhibit A-9), and the Company's decommissioning base case in Exhibit A-5.[141] He testified that these decommissioning estimates are iterative with each subsequent estimate relying on the previous estimate as the initial basis for costs. Mr. DeCooman testified that from the 2020 Mead & Hunt study to WSP's study, there was an $816 million increase in decommissioning costs, of which the vast majority—approximately $642 million—represented increased cost estimates for earthwork and disposal of contaminated sediment.[142]

Mr. DeCooman recapped that the Company used decommissioning estimates from the WSP decommissioning study (Exhibit A-9) as a baseline and increased those costs by 40% to account for "owner's costs" before adding site-specific escalation for the environmental risk adder, which resulted in another increase (aggregate/fleetwide) of roughly 41%.[143] Mr. DeCooman opined that the Company's various cost adders were unreasonable and increased the decommissioning estimates from the WSP study by approximately 193%; further, he noted that the WSP estimates were already an approximately 250% increase from the decommissioning cost estimates used to support depreciation rates in the Company's most recent depreciation case.[144] He testified that the Company did not justify applying a 40% increase for owner's costs when: (1) past depreciation cases only supported a 10%-15% increase for such costs; and (2) the WSP study already included a 25.5% adder for those expenses.[145]

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[141] 3 Tr 829-830.
[142] 3 Tr 831.
[143] 3 Tr 819-820; 831.
[144] 3 Tr 822 (citing Case No. U-20849).
[145] 3 Tr 822.

Mr. DeCooman also testified that the Company's site-specific environmental risk adder did not appear to be limited to environmental risk, and it was unclear whether that cost increase was duplicative of those already included in ostensible owner's costs.[146] He concluded that the Company did not justify a significant increase to the already detailed decommissioning estimates provided by the WSP study.[147] Additionally, he asserted that as in the sale case, the Company neglected to adjust replacement power costs for inflation.[148] He explained that Staff's updated business case for decommissioning extended the length of the analysis to 2098,[149] based costs on WSP's estimates in Exhibit A-9, applied the Company's fleetwide environmental remediation risk factor of 1.41, and adjusted replacement power costs for inflation.[150]

The results of Mr. DeCooman's NPV modeling for the decommissioning business case provide a range of results from $1.188 billion (low) to $2.047 billion (high) with a base case of $1.553 billion.[151]

Mr. Coppola examined the Company's decommissioning business case, and he made the following adjustments: (1) lowered capital expenditures projected by the Company by 20%; and (2) lowered the cost of replacement power from $79/MWh to $73/MWh.[152] Mr. Coppola asserted that these changes moderated the large 40% cost

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[146] 3 Tr 822-823.
[147] 3 Tr 823.
[148] 3 Tr 823.
[149] This was done to align the timeframe with Staff's Updated Relicensing Business Case, which itself extended the timeframe to account for the realistic timing of dam removal at the end of that scenario.
[150] 3 Tr 823, 838; see also Exhibit S-1.20 (Staff's Updated Decommissioning Business Case).
[151] Exhibit S-1.22.
[152] 3 Tr 294.

increase modeled by the Company and made the replacement energy cost more reasonable and aligned with market rates.[153]

The results of Mr. Coppola's modeling for the decommissioning business case resulted in a NPV cost estimate of $1.492 billion.[154]

Ms. Mistak testified that she is familiar with decommissioning costs in Michigan and other states, and she has direct experience derived from participating in such projects through the DNR's approval of related funding. She testified that decommissioning costs provided by the Company "are not only significantly higher than actual dam removal costs reported elsewhere, but also include measures that are not typically included in dam removal projects including required fish passage, reservoir dredging, and extensive erosion control."[155]

Ms. Mistak explained that in FERC filings, the DNR has criticized the Company for proposing unnecessary measures in decommissioning projects, such as excessive sediment removal, extensive seeding, and excessive erosion control, instead of allowing natural restoration.[156] She contended that despite these concerns, the Company continued using the same flawed methodology from the 2007 Mead & Hunt report, which WSP later inflated by 199%, resulting in a decommissioning estimate of over $1.226 billion for the 13 dams.[157] For the purpose of cost comparison with WSP's decommissioning estimates (which ranged from $39 million for Five Channels to $280

[153] 3 Tr 320.
[154] Table B at 3 Tr 294.
[155] 3 Tr 416.
[156] 3 Tr 417.
[157] 3 Tr 417.

million for Hardy),[158] Ms. Mistak provided case studies and removal costs for actual FERC-regulated hydropower dams in Michigan derived from the 2023 Practitioner's Guide to Hydro Power Dam Removal by the American Rivers and Hydropower Reform Coalition.[159] These examples included the Boardman Dam ($10.5 million removal in 2017), Brown Bridge Dam ($4.4 million removal in 2013) and the Sabin Dam ($6.0 million removal in 2018).[160] She similarly testified that there was a 2025 cost estimate to remove the Boyne Falls dam in Charlevoix County—which was formerly owned by Consumers Energy[161]—for between $9.4 and $11.28 million with 30% contingency, and with a further $2 million in additional costs for design and oversight.[162]

Ms. Mistak specifically took issue with WSP's estimate of $318 million for managing contaminated sediment, the existence of which the Company stated was an assumption derived from web-based research and a likelihood that contamination may be a factor due to urbanized developments in the watersheds of specific dams.[163] However, Ms. Mistak testified that, "[w]ithout actual sediment testing, I have no faith in this number and can attest that, apart from rivers that have been declared Superfund

[158] See Table 1 at 3 Tr 418.
[159] 3 Tr 420.
[160] 3 Tr 420 (citing DNR-26 at p. 48).
[161] As an aside, Ms. Mistak explained: "Interestingly, while my purpose in sharing this example is to highlight a well-justified former hydropower dam removal cost estimate, it is worth pointing out that this dam was sold by Consumers Energy to the Village of Boyne Falls for $1 in 1956, further demonstrating how uneconomical hydropower dams often become a public liability and financial burden." 3 Tr 421.
[162] 3 Tr 420 (citing Exhibit DNR-28).
[163] 3 Tr 418-419.

sites[164] by the Environmental Protection Agency such as the Kalamazoo River, the broad assumption of contaminated sediment is without merit."[165]

Mr. Trumble also took issue with the cost estimates for full decommissioning. He testified that he reviewed the 2007 and 2013 Mead & Hunt, the 2021 Kiewit, and the 2025 WSP cost estimates and methodologies provided by Consumers. Mr. Trumble testified that he "believe[s] that several items in those estimates assumed construction practices, which in my experience with over 50 dam removal projects in the State of Michigan, are not standard practice[.]"[166] He identified these non-standard practices as: (1) inclusion of large contingencies for specific line items when the overall estimate already employed a large contingency; (2) draining the reservoir over a 50-month period; (3) hydraulic dredging of the former stream channel prior to drawdown; (4) dredging of the entire or large portions of the drained reservoir without first quantifying the volume of sediment deposited; (5) removal and disposal of sediment assumed to be contaminated without first performing a sediment quality analysis; (6) very large grading costs for the entire reservoir; and (7) large seeding and planting costs for the entire reservoir.[167] He emphasized that many of these practices do not occur in his experience with typical dam removals in Michigan, and they can add tens of millions of dollars to cost estimates.[168]

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[164] While not explained by Ms. Mistak, "Superfund site" references an area managed under an environmental remediation program created by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, a federal law empowering the Environmental Protection Agency (EPA) to clean up sites contaminated with hazardous waste.
[165] 3 Tr 419.
[166] 3 Tr 444.
[167] 3 Tr 444.
[168] 3 Tr 444.

Mr. Trumble estimated potential cost savings by recreating and modifying the 2025 WSP spreadsheet to reflect an approach consistent with past Michigan dam removal projects.[169] The results of his rough estimation found a difference in price of approximately $593.86 million, reducing the cost of full decommissioning from $1.531 billion as estimated by WSP down to $937.79 million.[170] He emphasized that this estimate was not his opinion of actual project costs but merely a representation of what costs might be using WSP's methodology with adjusted assumptions such that his estimate should be considered as a "planning tool only."[171]

Mr. Andrews testified that Consumers used WSP's site-specific Class 5 decommissioning cost estimates and applied additional adjustments, including a 40% contingency, facility-specific environmental risk multipliers (1.08–1.50), and a 2% annual escalation factor, all applied multiplicatively.[172] He contended that these adjustments more than doubled most original WSP estimates, increasing costs by about $2.12 billion (98%) before escalation was applied.[173] Mr. Andrews took issue with the Company's methodology because WSP's Class 5 estimates can, by definition, already be overstated by up to 100% and already included a 10% contingency and a 15% cost adder.[174] He opined that the Company's modeling "layered multiple forms of conservatism on top of

[169]3 Tr 448. He specified that the results were not his opinion of actual project costs but merely a representation of what costs might be using the WSP approach and adjusting for assumptions about decommission that are typical for projects in Michigan.
[170] 3 Tr 449.
[171] 3 Tr 448.
[172] 3 Tr 339.
[173] 3 Tr 339.
[174] 3 Tr 340.

one another without demonstrating that each adjustment addressed a distinct and non-overlapping risk."[175]

Mr. Andrews testified that he corrected the decommissioning estimates by removing overlapping contingencies and risk factors (the 40% owner's costs adder and the environmental risk adder) while retaining the original WSP risk adders and annual escalation.[176] He explained that the result, shown on Exhibit AB-1, showed "on a fleet-wide basis, the corrected cost-of-removal stream is approximately $2.12 billion or 49% lower than the $4.29 billion used by Consumers."[177] He explained that when corrected decommissioning costs are incorporated into the Company's NPV framework, decommissioning is 23% less expensive than the sale and PPA on a NPV basis ($471 million compared to $613 million).[178] Mr. Andrews explained that this conclusion did not rely on best-case or optimistic outcomes, retained WSP's estimates and escalation, and that Consumers itself categorized the WSP cost estimate as the most likely.[179] Mr. Andrews concluded that decommissioning is significantly less expensive than the sale and PPA scenario and that the Company's opposite conclusion was driven by discretionary modeling choices that materially inflated decommissioning costs.[180]

The results of Mr. Andrews' modeling for the decommissioning business case resulted in a NPV cost estimate of $1.209 billion when placed into the Company's NPV framework.[181]

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[175] 3 Tr 340.
[176] 3 Tr 340-341.
[177] 3 Tr 341.
[178] 3 Tr 341; see also Exhibits AB-1 and AB-2.
[179] 3 Tr 342.
[180] 3 Tr 342.
[181] See Exhibit AB-11, p. 2.

Mr. Jester asserted that the Company's decommissioning estimates are unreliable because they rely on incomplete data and multiple rounds of engineering reports with some assumptions that have not been updated since the early 1990s.[182] Similar to fellow MHRC witness Melchior's testimony (discussed *infra*), he highlighted that the company's projections overstate costs by assuming extensive sediment removal and adding large overhead and contingency amounts without adequate justification or recent consultation with regulatory bodies.[183]

Mr. Jester asserted that the U.S. Geological Survey (USGS) compiled records of actual dam decommissioning costs along with characteristics of those dams to create a predictive model of dam removal costs.[184] He used fellow MHRC witness Melchior's estimates from the USGS model and applied the upper ends of the cost ranges, effectively the 75th percentile and the 97.5th percentile, to compare decommissioning costs against the sale and relicensing scenarios.[185] He testified that using the 75th percentile, decommissioning all 13 dams was the least costly option and was substantially lower than either selling or relicensing the dams.[186] He added that even using the 97.5th percentile of decommissioning costs, the overall recommendation (when examining dams on an individual basis) showed a mixture of decommissioning and relicensing was the cheapest, with divestment recommended for only two dams.[187] Mr. Jester cautioned that his analysis should not been seen as a claim that his alternative decommissioning cost estimates are

[182] 3 Tr 633.
[183] 3 Tr 633-634.
[184] 3 Tr 635.
[185] 3 Tr 635-638.
[186] 3 Tr 637.
[187] 3 Tr 638.

correct, but rather, that the Company's evidence regarding decommissioning costs is inadequate to support the decision that the Commission must make in this case.[188]

Mr. Jester's NPV decommissioning estimates using the USGS model were $706 million (using 75th percentile decommissioning costs) and $1.105 billion (using 97.5th percentile decommissioning costs).[189]

Mr. Melchior explained that he examined the 2025 WSP report that the Company relied upon for decommissioning costs, as well as the 2021 M&H report that WSP relied upon.[190] He described how the WSP study relied heavily on the 2021 M&H study but added several costs related to sediment management and post-removal activities that added significantly to the cost estimates.[191]

Mr. Melchior testified that "[s]ediment management costs typically are the most expensive element of dam removal projects" and that "[a]ccurate sediment volume estimates and recent contaminate sampling data are the most important elements needed to accurately estimate dam removal costs."[192] However, he asserted that the WSP study did not estimate sediment volumes and relied on the 2021 M&H report, which in turn relied upon a 1991 sediment estimate from Lawler, Matusky, & Skelly Engineers (Lawler).[193] Mr. Melchior testified that the 1991 Lawler estimates are outdated, utilized an estimation method used in hydro power management instead of dam removal, and did not employ what he considered to be best practices for estimating sediment volume in dam

[188] 3 Tr 634.
[189] 3 Tr 637, 638.
[190] See 3 Tr 552-557.
[191] See 3 Tr 557-559.
[192] 3 Tr 559.
[193] 3 Tr 559-560.

removals.[194] Mr. Melchior explained that, by contrast, his approach was to physically measure sediment depth through probing or coring.[195] Further, Mr. Melchior identified inaccurate assumptions regarding sediment deposition in the Lawler estimate and apparent contradictions between the M&H study and the Lawler report's conclusions and the aerial photos provided in the study.[196]

Regarding the presence of contaminated sediment and appropriate remediation, Mr. Melchior testified that WSP and Consumers did not include any contaminated sediment testing whatsoever, so there was no data to determine whether assumptions about contaminated sediment at selected dams was accurate.[197] Mr. Melchior also highlighted that the Calkins Bridge dam (creating Lake Allegan) is adjacent to a Superfund site,[198] making the presence of contamination highly likely; however, he explained that the Superfund status and federal involvement made it likely that the Company would not be entirely responsible for environmental remediation.[199]

Mr. Melchior explained that sediment in dam removals can be managed actively through excavation or dredging, or passively by allowing natural downstream transport, with most projects using a combination of both methods.[200] He noted that WSP's cost estimates assume extensive hydraulic dredging, which may be unnecessary for sand-filled impoundments like those in northern Michigan rivers, as these sediments can be

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[194] 3 Tr 560-561.
[195] 3 Tr 560.
[196] 3 Tr 561-562.
[197] 3 Tr 576-577.
[198] While not explained by Mr. Melchior, "Superfund site" references an area managed under an environmental remediation program created by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, a federal law empowering the Environmental Protection Agency (EPA) to remediate sites contaminated with hazardous waste.
[199] 3 Tr 589.
[200] 3 Tr 564.

excavated with standard equipment at much lower cost.[201] Finally, he questioned the accuracy of WSP's sediment volume estimates, which rely on outdated data and methods.[202]

Mr. Melchior also took issue with post-removal activities included in WSP's cost estimates. He explained that the use of grade control[203] at dam removal sites may be warranted, but there was insufficient information to tell if such measures would actually be required.[204] Mr. Melchior explained that WSP's assessment assumed riverbank stabilization measures at 15%-20% of both banks post removal, but there would be minimal need for riverbank stabilization in drained impoundments.[205] Mr. Melchior further testified that grading and surface-preparation costs are unclear and inconsistently applied across projects, and that WSP's definitions lack enough detail to determine whether the unit costs are reasonable.[206] He also asserted that sea lamprey barrier costs are unreasonable because fish passage management would fall under state and federal agencies, not dam owners, and such barriers are not a required component of decommissioning.[207] He also testified that WSP cost estimates included full removal of all earthen berm dam sections at a cost of $64 million; however, full removal is not always necessary and partial removal could result in significant cost savings.[208]

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[201] 3 Tr 564-566.
[202] 3 Tr 566.
[203] He helpfully explained that grade control consists of immobile riverbed structures such as concrete weirs, dams, vanes, or riffles that maintain a channel or riverbed at a prescribed elevation. 3 Tr 567.
[204] 3 Tr 568.
[205] 3 Tr 569.
[206] 3 Tr 570.
[207] 3 Tr 571.
[208] 3 Tr 581.

Mr. Melchior testified that the American Association for the Advancement of Cost Engineering (AACE) develops standards for cost estimation, and WSP classified the results of its study as a Class 5 estimate meaning that it has an expected accuracy range of -50% to +100% of the published estimate.[209] He opined that the lack of sediment volume and contaminant data coupled with the absence of known regulatory requirements for sediment management make it impossible to determine if WSP's estimate is truly within the bounds of the definition of a Class 5 estimate.[210] He also opined that providing a single number for a Class 5 estimate is misleading; it should instead be presented as a range. For WSP's report, he testified that the range should be expressed as between $770 million and $3.1 billion.[211]

Mr. Melchior stated that the U.S. Geological Survey (USGS) accumulated records of actual dam decommissioning costs for 668 decommissionings along with characteristics of those dams to create a predictive model of dam removal costs.[212] He explained that this model used empirical data and also provides variances that offer a form of sensitivity analysis.[213] He testified that he ran this model and set the complexity score for each dam removal at the maximum level.[214] He explained that the results provided a total median decommissioning cost of $170.46 million, and the upper 50% prediction interval estimated total costs of $489.98 million.[215] He explained that even the high result under the USGS model was less than M&H combined total of $511 million,

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[209] 3 Tr 572-573.
[210] 3 Tr 574.
[211] 3 Tr 574.
[212] 3 Tr 581.
[213] 3 Tr 582.
[214] 3 Tr 584.
[215] 3 Tr 585.

and far less than the WSP total of $1.539 billion.[216] He concluded that many WSP estimates fall far outside the model's 95% prediction interval which implies that, for several dams, WSP's figures would represent the most expensive removals of their size ever documented.[217] Mr. Melchior asserted that the USGS modeled cost estimates provide an objective, empirical, and non-expert-dependent tool for evaluating discrepancies in dam-removal cost estimates, helping decision makers assess whether high figures such as those from WSP are inflated or unreasonable.[218]

In rebuttal, Mr. Blumenstock stated that the Company justified its 40% cost increase for categories that were understated or not addressed in WSP's construction line items. He asserted that support for these was discussed in discovery responses that were included in Exhibit AB-3, and he explained that an additional cost adder was consistent with WSP's own statement that a final determination of costs requires additional study to characterize vegetation, archaeological, and hydrologic conditions.[219] He contended that the environmental risk adder addressed uncertainties that are distinct from the 40% cost adder that are inherent in decommissioning and that it reflects quantified environmental risks identified via the framework provided in discovery.[220] Some of these uncertainties included sediment characterization, management, and permitting.[221]

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[216] 3 Tr 585.
[217] 3 Tr 586.
[218] 3 Tr 587-588.
[219] 3 Tr 83.
[220] 3 Tr 83.
[221] 3 Tr 83-84.

Mr. Blumenstock also dismissed as "unfounded" Ms. Mistak's claim that the Company included several unneeded decommissioning activities in its estimates. He explained:

> Ms. Mistak admitted in her own testimony . . . that absent data collection and testing, she has no faith in the decommissioning costs. The Company agrees with that admission. Consumers Energy has not collected data or had final negotiations with regulatory agencies regarding decommissioning; so at this time, the Company cannot definitely identify what activities will be required or how much sediment or contamination is present. Data collection and negotiations would take several years to complete. It would be premature to fully engineer a decommissioning plan and all related activities that may not occur for many decades and may never occur under Consumers Energy's ownership. It would be unreasonable at this time (and for purposes of this case) to incur the time and expense required to fully engineer all three options as though any of the three could go into an implementation phase immediately. The decision point in this case does not require that level of detail in order to make a reasonably informed decision. In the absence of having that type of data and negotiations, the Company hired an industry expert (WSP) to estimate the cost based on industry standard activities that are reasonably expected to be necessary. For high-level and early-stage planning purposes, Consumers Energy submits that this is reasonable, prudent, and sufficient.[222]

For substantially similar reasons, Mr. Blumenstock criticized Mr. Trumble's contention that the Company's estimates included unneeded decommissioning activities.[223] Mr. Blumenstock acknowledged Mr. Trumble's lower estimate of decommissioning costs (only $938 million or 60% of WSP's $1.531 billion estimate); however, he noted that Mr. Trumble admitted that this was not his opinion about actual project costs and that his estimate should only be viewed as a planning tool.[224] Mr. Blumenstock critiqued this admission stating "[i]n other words, Mr. Trumble promotes a low-ball estimate of the potential costs of decommissioning even while acknowledging the very risks that

[222] 3 Tr 100-101.
[223] 3 Tr 104.
[224] 3 Tr 104.

Consumers Energy has identified that could lead to considerably higher decommissioning costs."[225] He asserted that the Commission "should not take the scope of decommissioning work proposed by the MDNR seriously" and should not give credence to "hypothetical, pie-in-the-sky scenarios."[226]

Mr. Blumenstock objected to ABATE's claim that the Company did not demonstrate how annual costs were determined. He asserted that discovery responses in Exhibit AB-3 clearly explained that: (1) decommissioning capital was grounded in WSP's site-level estimates scaled for completeness and escalated to activity years; (2) relicensing capital and O&M reflected the long-term financial plan for near-term projects and used WSP's planning thereafter; and (3) the PERT-based risk treatment and inputs were provided in discovery.[227] He disagreed with ABATE's contention that the WSP estimates are "conservative" explaining that they are Class-5 screening-level estimates with wide uncertainty ranges that are "not deterministically conservative or complete."[228]

Mr. Blumenstock asserted that the Company's 40% owner's costs adder addressed cost categories that were understated or not included in WSP's direct line items (internal loadings, program management, permitting, legal, owner's engineering); he asserted that these costs were addressed in discovery as shown in Exhibit AB-3.[229] He stated that the adder was consistent with the Company's experience and with WSP's own statement that additional study was need to characterize vegetation, archaeological,

[225] 3 Tr 104.
[226] 3 Tr 105.
[227] 3 Tr 93.
[228] 3 Tr 93.
[229] 3 Tr 94.

and hydrologic conditions which are typically performed as owner's costs.[230] Mr. Blumenstock rejected contentions that the environmental risk adder was excessive or duplicative because it reflected quantified environmental risks identified and analyzed via the PERT framework provided to the parties in discovery.[231] He claimed that it addressed uncertainty in sediment characterization, management, and permitting.[232]

Mr. Blumenstock agreed with Mr. Melchior that there were a range of potential cost outcomes adding that, in his experience, actual costs are often higher than estimates.[233] He testified that he had limited experience with the USGS database tool for decommissioning estimates even before Mr. Melchior identified it in his direct testimony. However, he examined the tool more closely and stated that: (1) it has low statistical accuracy with an R^2 regression of only 57%;[234] (2) it is unclear whether the USGS cost estimates include overhead, and the study itself suggests true costs are likely underestimated; (3) it does not consistently describe sediment management or contaminated-material handling; (4) most of the 668 dams in the dataset are smaller and not comparable to the Company's dams because many lacked key cost drivers like contaminated sediment removal; and (5) the tool notes that prediction errors are larger for bigger, more expensive projects, indicating the tool is not suitable for estimating costs for the Company's large river hydro facilities.[235] He concluded that these shortcomings meant that the USGS model did not provide a more accurate estimate of

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[230] 3 Tr 94.
[231] 3 Tr 94-95 (citing Confidential Exhibit A-39).
[232] 3 Tr 95.
[233] 3 Tr 112.
[234] Mr. Blumenstock explained that regression ranges are score from 0%, showing no correlation, to 100% showing perfect correlation.
[235] 3 Tr 113-114.

decommissioning costs than what the Company was assuming, and in fact, that it was significantly less accurate than the site-specific work performed by WSP.[236]

In his rebuttal, Mr. Andrews explained that Mr. DeCooman correctly removed the Company's 40% owner's costs adder from Staff's decommissioning scenario but retained the Company's environmental risk adder applied to WSP's estimates. Per Mr. Andrews, Mr. DeCooman reasoned that this environmental remediation factor captured some additional uncertainties identified by the Company.[237] But Mr. Andrews contended that the environmental remediation factor is not independently supported and overlaps with contingencies already embedded in WSP's Class 5 estimate, which already carries an accuracy range of -50% to +100% of costs.[238] Mr. Andrews explained:

> Moreover, the Company's development of these factors, which Staff provides in its Confidential Exhibit S-1.11, describes the basis for the Project Adjustment factors, and characterizes the factors in general terms that are not limited to environmental risk. Staff itself acknowledged that the description of these factors was "general enough where it is unclear whether, or to what extent, it is adjusting for uncertainties included in Consumers cost adders." Applying a factor whose basis is unclear and whose scope overlaps with WSP's embedded contingencies does not improve the estimate, it simply inflates it.[239]

He testified that WSP's decommissioning estimates, which were already 250% higher than earlier figures, already included a 25.5% cost adder, and ABATE's decommissioning scenario uses WSP's figures without adding unsupported risk multipliers or an additional 40% contingency.[240] Mr. Andrews asserted that removing the risk factor lowers the decommissioning net present value to $1.209 billion, which is $344 million (about 22%)

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[236] 3 Tr 114.
[237] 3 Tr 372.
[238] 3 Tr 373.
[239] 3 Tr 373.
[240] 3 Tr 373.

less than the Staff's base estimate such that decommissioning is about $100 million cheaper than the sale scenario.[241]

Mr. Andrews stated that he took no issue with Mr. Coppola's adjustment to replacement power rates or closing costs; however, he contended that Mr. Coppola's analysis was deficient in its treatment of capital and O&M expenses in the decommissioning scenario.[242] Mr. Andrews explained that Mr. Coppola's 20% reduction to the company's decommissioning cost estimate was arbitrary because it failed to address the specific unsupported assumptions that inflated the original numbers.[243] He stated that the company's use of a 40% owner's costs adder and additional risk multipliers created overstated costs, and that removing these (while keeping the underlying WSP estimates) produces a more realistic figure.[244] According to Mr. Andrews, Mr. Coppola's approach overstated decommissioning costs by $283 million on an NPV basis compared to ABATE's corrected scenario.[245]

In rebuttal, Mr. Jester opined that the 20% adjustment Mr. Coppola proposed was arbitrary and unsupported unlike the specifically justified adjustments proposed by other parties.[246] Mr. Jester compared Mr. Coppola's decommissioning analysis to those prepared by other witnesses to highlight that every other witness, especially those with experience in decommissioning (e.g. DNR witness Trumble and MHRC witness Melchior)

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[241] 3 Tr 374.
[242] 3 Tr 379.
[243] 3 Tr 380.
[244] 3 Tr 380.
[245] 3 Tr 380.
[246] 3 Tr 648.

found that decommissioning scenarios should be adjusted downward by far more than the arbitrary 20% adjustment proposed by Mr. Coppola.[247]

ii. Briefing

In its briefing the Company extensively addresses concerns about sediment management and removal costs in its decommissioning scenario. Consumers argues that WSP's higher decommissioning cost estimates are primarily driven by extensive sediment management and removal, especially contaminated sediment, which older Mead & Hunt studies largely omitted, making sediment handling the key reason for the cost differences.[248] The company argues that criticisms from MHRC and DNR witnesses about insufficient sediment data do not justify dismissing the sediment-related costs in its decommissioning estimates.

First, the Company explains that it is untrue that the Company has not done any sediment sampling because some sampling occurred in the past (albeit more than a decade ago) and "[w]hile there is no indication in the record that those older samples were used as part of the method for estimating sediment volumes or contamination levels in WSP's decommissioning studies, it is reasonable to conclude that if those studies were wildly inconsistent with the sampling data in the Company's possession, that information would have been noted."[249]

Second, Consumers argues that it would be premature to engineer and fully plan all decommissioning activities, collecting the sediment data critics demand would take years and is unreasonable because the purpose of this case is to provide an initial

[247] 3 Tr 648-652.
[248] Consumers brief, 18.
[249] Consumers brief, 19 (citing Exhibit DNR-37, p. 5).

screening for capital expenditure planning.[250] The company maintains that detailed sediment investigations are appropriately performed after a formal decision to decommission, not at this preliminary planning stage.[251] Consumers contends that in the absence of definitive sampling data, the Company hired WSP to estimate costs based upon industry standards, and WSP performed research to estimate sediment volume and potential contamination.[252] The Company rejected Mr. Melchior's claim that the 1991 Lawler study on sedimentation was flawed because it was sufficient to be relied upon by three subsequent engineering firms.[253]

Third, the company argues that although opposing witnesses question the certainty of WSP's sedimentation and contamination estimates, none presented evidence showing the estimates are inaccurate. The Company argues the figures are appropriately being used as planning-level estimates to inform long-term decision-making, not to initiate decommissioning work, and are therefore reasonable for this case.[254]

The Company also defended both its 40% owner's costs adder and its environmental risk adder. Consumers repeated the relevant portions of Mr. Blumenstock's rebuttal testimony contending that these two cost adders did not overlap and were intended to address concerns not included in the WSP decommissioning estimates.[255] Consumers rejects Staff's conclusion that these cost adders overlap because Staff ostensibly took one sentence from a confidential exhibit out of context; the

[250] Consumers brief, 19, 20.
[251] Consumers brief, 19-20.
[252] Consumers brief, 21 (citing Exhibits A-9, p. 14; DNR-38, pp 1-2).
[253] Consumers brief, 21-22.
[254] Consumers brief, 22-24.
[255] Consumers brief, 30-31.

Company highlights that the environmental cost adder was targeted at specific, non-overlapping risks.[256] The Company also highlights Mr. Blumenstock's detailed breakdown of the 40% owner's costs adder and how it accounts for items that were understated or not included in WSP's cost estimates.[257] In fact, the Company opines that its 40% owner's cost estimate is actually conservative because recent projects have shown higher owner's costs, and WSP itself indicates that additional studies related to vegetation, archaeological/historic resources, and hydrologic/biologic conditions, will be required.[258]

The Company also addressed the USGS alternative decommissioning estimates advanced by MHRC. Consumers emphasizes that the USGS-based model is not an engineering-based substitute for WSP's planning-level estimate, and its use would substitute generalized public data for the site-specific conditions that drive dam removal costs.[259] The Company's arguments related to the USGS model closely track those presented in Mr. Blumenstock's rebuttal testimony.[260]

In its brief, Staff asserts that the Company did not justify the application of both its 40% owner's cost adder and its 41% environmental risk adder. Staff claims that the Company failed to provide actual evidence to counter the claims of Staff and other parties, and the Company's claims do not fully align with the analysis used to support the 41% environmental cost adder.[261] [redacted]

[256] Consumers brief, 31.
[257] Consumers brief, 32 (citing 3 Tr, 83, 94).
[258] Consumers brief, 33 (citing 3 Tr 94 and Exhibit A-9, p. 16-17).
[259] Consumers brief, 34.
[260] Consumers brief, 34, 35.
[261] Staff brief, 29 (citing Conf Exhibit S-1.11).

[redacted][262] Staff argues that uncertainties in sediment volume and characterization support the need for additional studies, but do not justify the Company's use of both cost adders in its decommissioning estimates.[263] Given competing claims from various parties (like DNR and MHRC) that WSP likely overstated certain costs, Staff maintains that its mid-range estimate and accompanying sensitivity analysis reasonably balance the differing positions in the case. Staff explains that its low-end estimate removes the Company's additional cost adders, and thus its sensitivity analysis best captures the range of potential costs presented in this case.[264]

The Attorney General's brief repeats the analysis that Mr. Coppola performed and concludes that the decommissioning scenario, even with lower costs estimated by Mr. Coppola, would still be more costly than the sale scenario.[265] The Attorney General also responds to MHRC witness Jester's criticisms of Mr. Coppola's modeling stating that while Mr. Coppola's analysis was not as granular as some parties' witnesses, his approach was not unreasonable. The Attorney General then highlights Mr. Coppola's experience in the utility industry and as an independent consultant.[266]

The DNR's brief argues that decommissioning would not be nearly as expensive as Consumers estimates. First, the DNR points out that Consumers admits its decommissioning cost estimates are not based on dam-specific data or discussions with regulatory agencies, making the estimates unreliable and insufficient to meet their burden

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[262] Staff brief, 29 (citing Conf Exhibit S-1.11).
[263] Staff brief, 29-30.
[264] Staff brief, 30.
[265] Attorney General brief, 48.
[266] Attorney General brief, 54.

of proof. Because the company failed to provide realistic decommissioning information, the Commission should reject their unsupported estimates.[267] Second, the DNR argues that the Company's decommissioning estimates are drastically inflated because they include extensive work that Michigan regulators rarely require, such as large-scale dredging and reservoir stabilization.[268] Testimony from DNR and EGLE experts shows that removing these atypical items would cut the estimates by hundreds of millions of dollars, demonstrating that the Company's estimates are unrealistic and exaggerated.[269] Third, the DNR argues that real dam-removal projects in Michigan show Consumers' estimates are significantly inflated, especially compared to recent, thoroughly evaluated removals like the Boyne Falls project that cost around $11–13 million.[270] The DNR contends that despite having access to real-world examples and industry-standard methods, Consumers chose not to conduct necessary site-specific studies and instead presented decommissioning costs more than four times higher than its own 2013 estimates.[271]

ABATE's briefing generally summarizes the criticisms of the Company's decommissioning case raised by Mr. Andrews in his direct testimony.[272] ABATE specifically argues that the Company's environmental risk adder is baseless because they rely on generic factors unrelated to sediment contamination, despite the company admitting it has no site-specific sediment data to justify those costs.[273] ABATE maintains

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[267] DNR brief, 26-27.
[268] DNR brief, 27-28.
[269] DNR brief, 28-29.
[270] DNR brief, 30, 31.
[271] DNR brief, 32.
[272] ABATE brief, 2-6
[273] ABATE brief, 4.

that after stripping out unjustified and improperly layered risk adders, the cost of decommissioning is less than the cost of the sale and PPA.[274]

ABATE criticized Staff's decommissioning scenario for retaining the Company's environmental risk adder for essentially the same reasons stated in Mr. Andrews' testimony.[275] ABATE also criticized the Attorney General's decommissioning analysis for the same reasons as in Mr. Andrews' testimony, i.e. Mr. Coppola's general 20% cost reduction was not tied to any specific methodological error or unsupported assumption and failed to address the scope of the flaws in the Company's case.[276]

MHRC's briefing generally argues that the Company's decommissioning cost estimate lacks credibility because it is dramatically inflated, unsupported by site-specific data or consultation with regulatory bodies, and was produced by a witness without dam-removal experience. MHRC argues that the Commission should consider witness expertise noting that MHRC witness Melchior has managed or designed 69 dam removals nationwide, DNR-sponsored witness Trumble leads EGLE's dam safety team with experience on more than 50 Michigan removals, and DNR witness Mistak likewise has extensive dam-removal experience in Michigan.[277] By contrast, MHRC points out that Mr. Blumenstock admitted having no dam-removal experience of any kind and could not explain WSP's limited, non-Michigan project history, making Consumers' expertise lesser compared to that of MHRC and DNR's experienced professionals.[278]

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[274] ABATE brief, 5, 6.
[275] ABATE brief, 20-21.
[276] ABATE brief, 24.
[277] MHRC brief, 19 (citing 3 Tr 390; 3 Tr 426; 3 Tr 444; and 3 Tr 550).
[278] MHRC brief, 20 (citing 3 Tr 137, 140-144, and Exhibit MHRC-82).

MHRC argues that the Company's decommissioning cost estimates are unreliable because the utility never collected essential data on sediment quantity or contamination, instead relying an outdated study from the 1990s.[279] MHRC and DNR experts testified that WSP's assumptions about widespread sediment contamination and its reliance on costly, non-standard sediment removal methods (like hydraulic dredging) lacked factual support and significantly inflated cost estimates.[280] Per MHRC, Consumers did not rebut the testimony of its witnesses and conceded it had not gathered any sediment data and had not even begun the process, underscoring the fundamental inaccuracy of its projected costs.[281]

MHRC repeats points from witnesses Melchior and Trumble to argue that WSP's decommissioning costs are systematically inflated because they include numerous non-standard, unnecessary, or otherwise atypical decommissioning activities that expert regulators and practitioners say rarely occur in dam removals.[282]

MHRC argues that the USGS statistical model (used by its witnesses Melchior and Jester) produces decommissioning cost estimates far lower than the WSP figures relied upon and later inflated by Consumers.[283] MHRC asserts that the USGS prediction intervals demonstrate that while individual dams may exceed median cost estimates, it is statistically implausible for all 13 projects to exceed the 95% interval, yet WSP's estimates do so for nearly half the dams.[284] MHRC further contends that Consumers witness

[279] MHRC brief, 22.
[280] MHRC brief, 23.
[281] MHRC brief, 24.
[282] MHRC brief, 24-25.
[283] MHRC brief, 26.
[284] MHRC brief, 27.

Blumenstock's rebuttal questioning the USGS model misunderstood the model and that his critiques either misstate how the model works or highlight flaws that apply more strongly to WSP's own methodology.[285]

MHRC reiterates the decommissioning estimates from Mr. Jester, Mr. Trumble, and Mr. Andrews to argue that Consumers has not meet its burden of proof because its estimates are deeply flawed and unreliable while intervenors with relevant experience all predicted lower decommissioning costs.[286]

MHRC also repeats Mr. Jester's critique of the Attorney General's decommissioning modeling stating the reductions made by Mr. Coppola were arbitrary.[287]

In its reply, the Company devotes extensive efforts to refuting MHRC's arguments related to the relative expertise of the witnesses.[288] The crux of the Company's argument is that MHRC's claims about witness expertise are misleading because witnesses Melchior, Trumble, and Mistak have specialized experience in limited aspects of dam removal work and lack experience comparable to the scale and complexity of the Company's projects such that their testimony does not undermine the Company's detailed, multidisciplinary analysis.[289] Consumers argues that MHRC unfairly downplays Mr. Blumenstock's qualifications even though his fleet-wide engineering leadership and consultation with specialized engineering firms (i.e. WSP) make him well-suited to provide the high-level planning and analysis required for evaluating this transaction, especially compared to intervenor witnesses who lack comparable experience with projects of this

[285] MHRC brief, 27, 28.
[286] MHRC brief, 28-29.
[287] MHRC brief, 36.
[288] See Consumers reply, 23-30.
[289] Consumers reply, 23-26.

scale.[290] Similarly, the Company defends its own experience decommissioning plants (albeit not hydroelectric dams) and WSP's expertise gained from their work with FERC.[291]

Regarding decommissioning cost estimates, particularly those related to sedimentation, Consumers argues that the intervenors wrongly frame this as a failure of the Company to meet its burden of proof when the real question is whether the company provided sufficient, reasonable evidence for forecasting inherently uncertain future decommissioning costs.[292] The Company asserts that Michigan law does not require absolute certainty in such estimates, only a reasonable basis, and the company's third-party expert, WSP, provided that basis.[293] The Company states that the intervenors offered no competing sediment or contamination analysis and instead demanded prohibitively expensive studies that WSP identified as appropriate only after a decommissioning decision is made.[294] Because gathering such data now would cost millions and is unnecessary for evaluating the sale at a high level, Consumers reasonably relied on planning-level estimates prepared by experienced dam-decommissioning consultants. The company contends that its evidence is legally sufficient, while the intervenors failed to prove otherwise.[295]

The DNR's reply objects to Consumers' argument, made in its initial brief, that it performed sediment sampling more than a decade ago and that while there is no record of WSP using these samples, it would be reasonable to assume that WSP would have

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[290] Consumers reply, 26-27.
[291] Consumers reply, 27-28.
[292] Consumers reply, 31.
[293] Consumers reply, 31-33.
[294] Consumers reply, 33, 34.
[295] Consumers reply, 35, 36.

noted if its analysis was inconsistent with past sampling. The DNR argues that there is no testimony from WSP about their methodology and there is no record evidence that WSP used the historical sediment sampling data.[296] DNR argues that Consumers' dam-removal cost estimates are unjustifiably high because Consumers ignored comparable real-world projects and failed to perform the level of analysis shown in established guidance and recent removals cited by the DNR.[297] Finally, the DNR asserts that Consumers bears the burden of persuasion, and it failed to present reliable evidence about sedimentation and related decommissioning costs; intervenors do not bear the burden of proving an opposite fact.[298]

ABATE's reply briefing repeats the points regarding cost adders and sedimentation sampling that were already raised in Mr. Andrews' testimony and in its initial brief.[299] ABATE adds that Consumers' brief belatedly states that the Company did sediment sampling, although it occurred more than a decade ago and there was no indication that the samples were used in the WSP's report that Consumers relied upon for its cost estimates.[300] ABATE explains that, "[i]n other words, beyond pointing to old samples which it isn't sure were evaluated, the Company sought to excuse this lack of information by asserting it would take too long for new samples and Consumers may not have been able to get customers to pay for it."[301]

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[296] DNR reply, 7-8.
[297] DNR reply, 8.
[298] DNR reply, 8-9 (citing *BCBSM v Governor*, 422 Mich 1, 89 (1985) and *S C Gary, Inc v Ford Motor Co*, 92 Mich App 789, 803-804 (1979)).
[299] See ABATE reply, 2-4.
[300] ABATE reply, 5.
[301] ABATE reply, 5.

ABATE also argues that Staff's justification for keeping the Company's 41% environmental-remediation adder in its base case is unsupported because the cited "evidence," (i.e. a statement in the WSP report that further studies may be needed) does not show the adder actually corresponds to the uncertainties it is meant to address or that the figure is reasonable. ABATE contends that the "goldilocks approach" advocated in Staff's briefing, i.e. splitting the difference between inflated company estimates and intervenor analyses, is an unsound basis for deciding costs involving 13 dams and hundreds of millions of dollars.[302]

MHRC argues that Consumers and WSP failed to perform any sediment testing even though sediment management is the primary cost driver for decommissioning, leaving the Company unaware of the true scope of required work. MHRC further notes that Consumers' newfound reference in briefing to decade-old and apparently unused sediment samples violates best practices and agency recommendations, underscoring the Company's inadequate and unreliable cost estimates.[303] MHRC argues that Consumers' claim that sediment testing was unreasonable is unfounded because the Company never even solicited bids and relied on no real-world data for its modeling.[304] MHRC also repeats arguments made in briefing about the relative expertise of intervenors' witnesses and Consumers' witness, and urges the Commission to give the testimony of DNR and MHRC "considerably more weight when it comes to the decommissioning estimates."[305]

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[302] See ABATE reply 4, n 2.
[303] MHRC reply, 17.
[304] MHRC reply, 17.
[305] MHRC reply, 17-18.

In its reply, Confluence states that it has not done any analysis of decommissioning costs, but it should be clear that, "whatever decommissioning costs may be, having a private party [i.e. Confluence] responsible for paying them is less cost and risk to ratepayers than having ratepayers fully responsible for paying them."[306]

iii. Analysis

Several broad topics of contention emerge from the parties' concerns about the Company's decommissioning scenario.

First, the Company's 40% "owner's costs adder" lacks adequate support in the record.

Certain contextual points raised by Staff and other intervenors should frame this issue: (1) the decommissioning studies used by the Company are iterative with each subsequent study relying on the previous one; (2) the most recent WSP estimate that the Company uses as its baseline (Exhibit A-9) is already a 250% increase from the decommissioning cost estimates used to support depreciation rates in the Company's most recent depreciation case, i.e. Case No. U-20849; (3) past depreciation cases have added 10%-15% increases to external decommissioning estimates for owner's costs; (4) WSP's most recent report already included a 25.5% adder for indirect costs and contingency; and (5) WSP's most recent study is a class 5 cost estimate with an expected accuracy range of -50% to +100%.[307] In this context, an additional cost multiplier of 40% appears extreme for the reasons stated by Staff and the intervenors.

[306] Confluence reply, 8.
[307] See 3 Tr 822; 829-830; see also Exhibit A-9, pp. 14, 16.

The Company's owner's cost adder ostensibly accounted for items that were either understated or not included in WSP's estimates such as internal loadings, program and project management, permitting, legal fees, and owner's engineering.[308] The Company justified this cost adder in a discovery response submitted in Exhibit AB-3, but the justification is not completely satisfying. The Company acknowledges that WSP's cost adder of 25.5% already includes 15% for indirect costs (loadings and project management), 0.5% for other project costs (studies, engineering, permitting, construction management, monitoring) and 10% contingency.[309] Thus, aside from legal fees and the category of "owner's engineer," WSP already considered these categories, but Consumers believed that WSP's adder was insufficient.[310] The Company's contention that WSP's adders were insufficient was ostensibly based upon "recent Company decommissioning experience and a discovery-supported methodology[.]"[311] However, as ABATE notes, the Company's ostensible "recent experience" was apparently based upon *forecasted*, indirect costs for the Karn and Campbell plant retirements, not actual data.[312] In short, the Company appears to have relied on its own forecasts for different decommissioning projects which is a questionable basis for such a substantial adjustment. In any event, the Company's forecasts for indirect and contingency costs for Karn and Campbell were 46.9% and 38.8% respectively,[313] and it is unclear why these

[308] 3 Tr 11.
[309] Exhibit AB-3, p. 5.
[310] See Exhibit AB-3, p. 4-5.
[311] 3 Tr 94.
[312] Exhibit AB-14, p. 1.
[313] Exhibit AB-14, p. 1.

figures would justify layering a 40% cost multiplier on top of WSP's class five cost estimate which already included a 25.5% cost adder.

Mr. Blumenstock noted that WSP stated that additional studies would be needed and that such activities could be considered owner's costs. Mr. Blumenstock is correct that a section of WSP's report entitled "uncertainty areas" stated:

> Additional studies would be needed to determine physical and chemical characteristics of soils and sediments, potential costs required to manage and dispose of potentially contaminated sediments upstream of the structures, type of vegetation and presence of non-native species, archaeological resources and historic structures, hydrology and hydraulic characteristics, as well as ecology and biology upstream and downstream of the structures.[314]

However, while WSP anticipated that additional studies would be required, it did not suggest that the costs of such studies would warrant an across-the-board increase of the extreme magnitude proposed by the Company.

In sum, to the extent the Company can justify any additional owner's costs given the already high estimates provided by WSP, it may support a modest increase for items not specifically addressed in WSP's study, such as legal expenses. But applying a 40% owner's cost adder on top of WSP's estimate, which already includes a 25.5% adder, is insufficiently supported.

Second, the Company provided limited support for its environmental risk adder with facility-specific environmental risk multipliers (1.08-1.50), which resulted in an aggregate 41% fleetwide cost adjustment. However, these adjustments have several questionable aspects that warrant significant caution in their consideration.

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[314] Exhibit A-9, p. 16-17.

The memorandum detailing the justification for the environmental risk adder is included as confidential Exhibit S-1.11. This PFD agrees with the Company that Staff's concern that the environmental risk adder was general enough that it might apply to more than environmental risk (and therefore be duplicative of the owner's cost adder) appears to stem from Staff's interpretation of the memo's first sentence.[315] [redacted][316] Thus, this PFD agrees with Consumers that the memo's first sentence was merely intended to be a general statement of the subject matter that would follow.

Nevertheless, the methodology and basis for the overall environmental risk cost adder should be subjected to meaningful scrutiny. [redacted][317] [redacted][318]

[315] Compare Conf 3 Tr 1229 with Consumers brief, 31.
[316] Exhibit S-1.11, p. 1; see also Conf 3 Tr 1228 (wherein Staff listed the specific environmental factors addressed by the environmental risk adder).
[317] Confidential Exhibit S-1.11, p. 2.
[318] Confidential Exhibit S-1.11, p. 2-3.

[redacted][319]

[redacted][320] [redacted]

[redacted][321]

[redacted]

[redacted][322] [redacted]

[redacted][323]

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[319] Confidential Exhibit S-1.11, p. 3.
[320] Confidential Exhibit S-1.11, p. 3.
[321] Confidential Exhibit S-1.11, p. 2,3.
[322] Confidential Exhibit S-1.11, Figure 1 at p. 5.
[323] Confidential Exhibit S-1.11, Figure 1, at p. 5, fn 2.

[redacted][324] [redacted][325] [redacted][326] [redacted][327] [redacted][328] [redacted][329] In any event, both WSP and MHRC witness Melchior

[324] Confidential Exhibit S-1.11, Figure 1 at p. 5. [redacted]
[325] Confidential Exhibit S-1.11, Figure 1 at p. 5.
[326] Confidential Exhibit S-1.11, Figure 1 at p. 5. [redacted]
[327] 3 Tr 419, 571-572.
[328] Confidential Exhibit S-1.11, Figure 1 at p. 5.
[329] See Exhibit A-9, p.199-200.

identified that, given the superfund status of the Kalamazoo river, management of decontamination efforts would be coordinated with the EPA, and that agency would potentially shoulder some portion of the costs relating to environmental remediation.[330] If anything, the potential for a government agency to be responsible for such costs may lessen cost risk rather than increase it.

In sum, although the methodology supporting the environmental risk adder is not without some merit, the concerns identified above warrant a cautious approach, and the record does not support applying the aggregate 41% adjustment as proposed.

Third, the significant uncertainties surrounding the level of sedimentation and the existence of contaminated sediment support concluding that the Company's decommissioning cost estimates are characterized by an extreme degree of uncertainty and are likely to be overstated.

The company acknowledges that sediment management costs, both generally and for contaminated sediment, are a key driver of its increased decommissioning cost estimates compared to previous studies.[331] Further, several intervenors testified that sediment management is one of the major cost drivers for decommissioning with accurate sediment volume and sediment contamination data being keys to reliable cost estimates.[332] The intervenors, particular DNR (through witnesses Mistak and Trumble) and MHRC (through witnesses Melchior and Jester), provided numerous critiques of the Company's sediment estimation, lack of data on contaminated sediment, and sediment management proposals.

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[330] See Exhibit A-9, p.199-200; see also 3 Tr 577-578.
[331] See Consumers brief, 17 n 3.
[332] See, e.g. 3 Tr 559.

Regarding sediment volume estimates, Consumers relied upon the most recent 2025 WSP study, which in turn relied upon several previous studies, which ultimately based sediment volume estimates on a 1991 reservoir fill rate analysis from Lawler, Matusky & Skelly Engineers ("Lawler study").[333] Mr. Melchior testified that the Lawler study estimates were outdated, used methods for estimation utilized in hydropower management rather than in estimating dam removal, and did not conform to his standard practices, i.e. physical sampling.[334] Mr. Melchior went on to identify flaws or incorrect assumptions in the Lawler study.[335] The Company's rehabilitation of the Lawler study primarily argued that the Lawler study was reliable because three engineering firms relied upon it in preparing past decommissioning estimates for the Company. Although multiple engineering firms may have reused the 1991 Lawler study, its age raises concerns regarding whether it fill rate analysis is apt for estimating current sediment conditions. The Company's reliance on repetitive use of the study does not negate the substantive criticism that physical sampling would yield far more accurate sedimentation estimates based upon present conditions rather than reservoir fill estimates derived from an analysis conducted 35 years ago. In sum, the Lawler study's usefulness and accuracy could potentially be limited by its age and methodology, and it is certainly subject to criticism for the reasons stated by intervenors.

Regarding contaminated sediment and related costs, WSP did not utilize sediment testing to confirm the presence of contaminated sediment. Instead, WSP utilized web-based research to estimate the presence of contaminated sediment based upon publicly

[333] 3 Tr 559-60; see also Exhibit MHRC-30 (the Lawler, Matusky, Skelly Engineers study itself)
[334] 3 Tr 560-561.
[335] See 3 tr 561-562.

available information about chemical spills in the watersheds feeding the dams.[336] Based on this internet research, WSP included contaminated sediment management into its estimates for the Hardy, Croton, Rogers, Alcona, Mio, Calkins (Allegan), and Webber dams.[337] [redacted][338] Thus, to some extent, the Company considered the potential risk of contaminated sediment, and the associated heightened costs, for all 13 dams.

The Company faced criticism from DNR and MHRC regarding its costs associated with contaminated sediment given the lack of any actual sediment sampling to confirm the existence or severity of contamination; however, the Company's replies to these concerns were not satisfying.

The Company first states that it performed sediment sampling, although most of it occurred over a decade ago.[339] The Company argues that, while there is no indication that those samples were used in WSP's decommissioning studies, "it is reasonable to conclude that if those studies were wildly inconsistent with the sampling data in Company's possession, that information would have been noted."[340] Contrary to the Company's argument, it is not reasonable to reach that conclusion. There is no indication

[336] Exhibit A-9, p. 14; Exhibit DNR 24, p. 11-12; Exhibit DNR-38, p 1-2.
[337] Exhibit DNR 24, p. 12.
[338] See Conf Exhibit S-1.11, p. 5.
[339] Consumers brief, 19 (citing Exhibit DNR-37 p. 5., wherein Mr. Blumenstock answered a discovery question stating that sampling occurred at 11 of the dams in 2014 with results submitted to FERC, with sampling at the Calkins Bridge dam collected in 2020 and submitted to DNR and EGLE).
[340] Consumers brief, 19.

that WSP was aware of these samples, and WSP's report explicitly stated in its limitations section that "[a]s no data is available at this time, there is significant risk associated with uncertainty to the volumes and level of contamination for management."[341] It is not even clear from the current record what those samples revealed because their existence is only confirmed in a discovery response with no further substantive information about them.[342] Accordingly, the notion that some unspecified person or party would have "noted" if WSP's study was inconsistent with these samples from over a decade ago is not persuasive.

The Company next argues that collecting actual sediment and contaminant data would have been premature and that fully engineering all decommissioning options as if they would be implemented immediately would be unreasonable. The Company contends that high-level Class-5 estimates under the AACE classification system are sufficient for this case.[343] This PFD agrees that fully engineering a decommissioning plan would be premature, but the Company's position presents a false dichotomy. The Company frames the issue as if its only options were either to fully engineer a ready-to-implement decommissioning plan or to rely entirely on preliminary estimates like WSP's internet research to estimate sediment contamination. The Company seems to ignore the possibility of intermediate steps, such as conducting any sediment sampling or contaminant testing to improve the reliability of its estimates without fully engineering a final decommissioning plan. Indeed, Mr. Blumenstock acknowledged that sediment

[341] Exhibit A-9, p. 14.
[342] See Exhibit DNR-37 p. 5.
[343] See e.g. Consumers brief, 20.

characterization and management "can dominate cost outcomes,"[344] which makes it disappointing that the Company's estimates regarding these critical, cost-dominating factors ultimately rely on the 35-year-old Lawler sediment fill rate analysis, WSP's internet research regarding possible contamination, and the Company's own somewhat opaque environmental risk adder. In any event, this PFD does not disagree that a Class-5 estimate is generally appropriate for initial screening or feasibility determinations. But without sediment sampling or testing, WSP's Class-5 estimate carries substantial uncertainty that is increased by the Company's cost adders, and this must be acknowledged because the resulting estimates may be significantly overstated.

Fourth, intervening parties cogently presented substantial testimony showing that the Company's decommissioning costs included several assumptions, practices, or measures that are usually unnecessary, atypical, or otherwise are not standard practice for dam removals. These practices relate to sediment management techniques, erosion control, dredging, grading, vegetation seeding, and other measures.

These various measures will not be fully repeated here as they were laid out above in the summary of the testimony of witnesses Mistak, Trumble, and Melchior.[345] Witness Trumble explained that if the specific practices he identified as uncommon were removed from WSP's report to make it more consistent with typical Michigan dam removals, then the WSP estimate's total cost of decommissioning would drop from $1.53 billion to $937 million, a difference of roughly $593.8 million.[346] The Company accurately pointed out

[344] 3 Tr 83.
[345] See, e.g. 3 Tr 416, 3 Tr 444, 3 Tr 446-447, 3 Tr 564-566, 3 Tr 568, 3 Tr 569, 3 Tr 571, 3 Tr 581.
[346] 3 Tr 448.

that Mr. Trumble noted that this was not his opinion of actual decommissioning costs, and Mr. Blumenstock denigrated Mr. Trumble's estimate as a "pie-in-the-sky" scenario.[347] But Mr. Trumble candidly stated that the estimate was not an actual representation of costs and was merely a representation of what costs might be utilizing the WSP methodology and adjusting for an approach typical of dam removals in Michigan.[348] In any event, this PFD views this figure in the way suggested by Mr. Trumble, i.e. "as a planning tool only,"[349] and it hints that when assumptions grounded in typical Michigan dam-removal practices are applied, the Company's decommissioning estimates are likely to be overstated because of the inclusion of atypical practices. This PFD similarly gives weight to the contentions by witnesses Mistak and Melchior that certain aspects of the Company's decommissioning costs may be unnecessary or atypical.

Closely related to the parties' disagreement over which decommissioning costs are necessary, MHRC and the Company also dispute the expertise of witnesses Trumble, Mistak, and Melchior, as well as how their experience compares with that of Company witness Blumenstock. While Mr. Blumenstock acknowledged that he has no experience with dam decommissioning or removal,[350] the Company itself recognized in briefing that witnesses Trumble, Mistak, and Melchior have specialized experience in certain aspects of dam removal work.[351] The Company accurately argues that Mr. Melchior is not an engineer and primarily focused on river restoration, and that Mr. Trumble and Mr. Mistak primarily bring regulatory experience in relation to dam removal work. Even so, this PFD

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[347] 3 Tr 105.
[348] 3 Tr 447.
[349] 3 Tr 447.
[350] 3 Tr 137-138.
[351] See Consumers brief, 25.

finds their testimony and expertise valuable and highly informative. Each offers insight drawn from practical or regulatory involvement with dam removal, perspectives which are not represented among the Company's witnesses. Given Mr. Blumenstock's lack of any experience in dam decommissioning or removal, testimony from witnesses with specialized, experience-based knowledge provides important context for evaluating the issues in this case that involve decommissioning practices and costs. To be clear, this PFD recognizes the strength of Mr. Blumenstock's engineering and executive credentials and does not seek to diminish the value of his testimony; rather, it finds that the specialized, experience-based perspectives offered by witnesses Trumble, Mistak, and Melchior provide information that is particularly relevant and highly probative to evaluating the decommissioning issues presented in this case.

Fifth, this PFD views the USGS statistical model's cost estimates as an indicative benchmark pointing to the likelihood that the Company's decommissioning estimates are overstated.

MHRC and the Company provided significant arguments about the accuracy and usefulness of the USGS model for dam removal costs. This PFD agrees with the Company that the USGS model results using generalized public data from past dam removals are not a substitute for site-specific conditions that drive dam removal costs. But as was already established, the Company did not actually sample (for use in the estimates presented in this case) site-specific sediment volume or contamination levels, which the parties generally agreed was a primary driver of dam removal costs. Thus, for some of the most important site-specific conditions, even the Company ultimately used speculative estimates.

In any event, even witness Melchior did not champion the USGS model as a replacement for the estimates provided by WSP and the Company. Instead, he urged the Commission to use the USGS model as an objective, empirical, data-driven benchmark to assess the reasonableness of the parties' cost estimates and the likelihood of higher-end cost outcomes.[352] This PFD generally agrees with that approach and treats the results of the USGS model as a reference point rather than as an estimate of actual decommissioning costs. In that vein, it is useful to note that all of the cost estimates from WSP's 2025 study (which do not include the Company's cost adders discussed early) are above the median and the upper 50% prediction interval results indicated by the USGS model, with some even far exceeding the model's upper 95% prediction interval.[353] Accordingly, this PFD treats the USGS model results as a preliminary indication, but not definitive evidence, that the Company's estimates are likely to be materially overstated.

Sixth, this PFD agrees with criticisms leveled by ABATE and MHRC that the Attorney General's decommissioning estimate, as put forward by Mr. Coppola, lacks supporting explanation.

Mr. Coppola simply reduced replacement power costs (consistent with his position on that issue described in the sale scenario, *supra*) and then applied a 20% reduction in costs. However, this 20% reduction was not supported by any detailed reasoning or reference to any specific unsupported modeling assumptions. In response to criticism, the Attorney General largely sought to bolster Mr. Coppola's reputation and recounted his experience in the utility industry; however, this does not offer any reason to support an

[352] See 3 Tr 587.
[353] See 3 Tr 585, 3 Tr 636. Notably, MHRC's brief collected the USGS model results with prediction intervals as well as the Mead & Hunt 2021 estimates and WSP 2025 estimates. See MHRC brief, 26.

otherwise unexplained and arbitrary 20% reduction in costs when other parties provided detailed analyses explaining why specific costs should be questioned or reduced. Accordingly, this PFD does not regard the Attorney General's decommissioning cost estimate as a thorough or rigorous analysis. Instead, it provides relatively little added value compared to the analyses provided by other parties, and it could more aptly be thought of as a sensitivity analysis for the Company's case in which replacement power costs were reduced to the Attorney General's preferred amount and where an arbitrary 20% cost reduction was applied.

In sum, this PFD concludes that the Company's decommissioning estimates are characterized by an exceptionally high degree of uncertainty due to the significant data gaps and methodological limitations described above. Moreover, the estimates are likely materially overstated given the Company's reliance on two large cost multipliers with limited support and numerous assumptions and practices that seemingly diverge from typical dam-removal methods employed in Michigan. Further comparative analysis of the different business cases takes place in subsection (B)(1)(e) of this PFD, *infra*.

c. Relicensing Business Case

i. Testimony

Mr. Blumenstock testified that Exhibit A-6 contained inputs and calculations for the relicensing business case. He explained that this scenario assumes that each dam will be granted a 50-year license renewal and will be decommissioned when its renewed license expires.[354] He added that this scenario included capital expenditures and O&M

[354] 3 Tr 63.

consistent with the Company's long-term financial plan through 2035 and then WSP's Hydro Roadmap study of known regulatory and life extension projects.[355] The results of the Company's NPV modeling for the relicensing business case provide a range of results from $1.532 billion (low) to $2.118 billion (high) with a base case of $1.842 billion.[356]

Mr. DeCooman took issue with the Company's relicensing scenario. He identified inconsistencies between Exhibits A-5 and A-6 regarding capital and O&M inputs, particularly in the timing and magnitude of expenditures regarding decommissioning.[357] However, he explained that while these discrepancies inflated costs in the final years of the study, their effect on the overall NPV of the relicensing business case was minimal and therefore not corrected as part of Staff's relicensing business case.[358] Mr. DeCooman testified that Exhibit A-6 assumes all 13 dams would be decommissioned within two years after 2084, which is an unrealistic and compressed timeline acknowledged by the Company as a simplification.[359] He also noted that the decommissioning costs in Exhibit A-6 were about 170% higher than the WSP estimates, creating a significant discrepancy.[360] However, the Company provided an extended version of its Exhibit A-6 (Staff Exhibit S-1.13), and inflated costs and assumptions were not included in the Company's extended analysis or Staff's updated business case.[361] Mr. DeCooman specified that Staff's updated relicensing scenario extended the analysis timeline to 2098 to allow for the same costs and timing of dam removals in Exhibit A-5, and further utilized

[355] 3 Tr 64.
[356] Exhibit A-7.
[357] 3 Tr 825.
[358] 3 Tr 826.
[359] 3 Tr 826.
[360] 3 Tr 826.
[361] 3 Tr 826.

the same decommissioning assumptions as in Staff's updated decommissioning scenario (i.e. removing the 40% owner's costs adder and retaining the 41% environmental cost adder).[362]

The results of Mr. DeCooman's NPV modeling for the relicensing business case provide a range of results from $1.673 billion (low) to $1.999 billion (high) with a base case of $1.795 billion.[363]

Mr. Coppola examined the Company's relicensing business case, and he altered the modeling by: (1) reducing capital expenditures and final decommissioning costs by 20%; and (2) reducing forecasted annual O&M expenses by 10%.[364] Mr. Coppola explained that these adjustments were needed for similar reasons as previously discussed in the decommissioning scenario.[365]

The results of Mr. Coppola's modeling for the relicensing business case resulted in a NPV cost estimate of $1.525 billion.[366]

Mr. Andrews examined the Company's business case for relicensing and concluded that it dramatically overestimated costs because it: (1) included substantial ongoing capital expenditures extending decades beyond relicensing; (2) overstated future decommissioning costs; (3) contained inflated and unreasonable O&M expenses; and (4) excluded reasonable operational benefits that would be expected to accompany relicensing.[367]

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[362] 3 Tr 839; see also Exhibit S-1.21 (Staff's Updated Relicensing Business Case).
[363] Exhibit S-1.22.
[364] 3 Tr 294.
[365] 3 Tr 321.
[366] Table B at 3 Tr 294.
[367] 3 Tr 348.

Mr. Andrews explained that, regarding capital expenditures, the Company's modeling assumed recurring facility-specific capital expenditures totaling $22.1 million continuing for 40 to 47 years in addition to the expenditures required for relicensing and routine rehab projects every 10 years.[368] Mr. Andrews asserted that these recurring capital expenditures "appear to be added merely as an estimation of annual capital expenditures that may occur[,]" were not included in the WSP study, and add approximately $906 million in 2022 dollars to the cost of relicensing.[369] He further stated that in addition to these unsupported estimates, the Company increased WSP's site-specific capital estimates by 36%-79%, with a fleet average of roughly 40%.[370] Mr. Andrews testified that this was concerning because WSP's capital estimates already included a 35% increase for overhead, with the Company's additional increase applied on top of that overhead adder.[371]

Mr. Andrews explained that, regarding decommissioning at the end of the renewed license period, the Company used the same 40% contingency and risk factors but assumed that decommissioning would occur in 2085 and 2086.[372] He opined that at the end of the next license, the Company should again have the option to pursue another relicensing or non-power generation scenarios.[373]

Mr. Andrews asserted that, regarding O&M expenses, the Company's model doubled O&M expenses from 2027 to 2028 and then assumed a 2% escalation

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[368] 3 Tr 348.
[369] 3 Tr 348, 349.
[370] 3 Tr 349.
[371] 3 Tr 350.
[372] 3 Tr 350.
[373] 3 Tr 351.

annually.[374] He asserted that WSP's workpapers do not support any major increase in O&M under the relicensing scenario, and that the Company justified this increase by claiming that O&M for each site was increased by $1 million above historical levels to reflect variability in annual spend.[375] Mr. Andrews opined that there was no adequate justification for this dramatic increase in O&M and that a better assumption would be to model ongoing O&M costs at historical levels with increases due to inflation.[376]

Mr. Andrews contended that, regarding operational benefits, the Company did not assume that relicensing would include generator upgrades or other improvements that would lead to increased energy production and market revenues.[377] He opined that this was unreasonable because such improvements are often undertaken in conjunction with relicensing and can provide significant benefits compared to their costs.[378] He estimated that approximately $90 million in generator upgrades and efficiency improvements could increase energy production by 66% and lead to $2.2 billion in additional market revenues over the study period.[379]

Overall, Mr. Andrews asserted that that utilizing his assumptions, relicensing is approximately $535 million, or 87% less expensive than the proposed sale on a net present value basis.[380] Thus, he concluded that when corrected, relicensing the dams in conjunction with generator upgrades is the least cost option.[381]

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[374] 3 Tr 351.
[375] 3 Tr 351.
[376] 3 Tr 352.
[377] 3 Tr 352.
[378] 3 Tr 352.
[379] 3 Tr 352, 353; See also Exhibit AB-1.
[380] 3 Tr 354.
[381] 3 Tr 355.

The result of Mr. Andrews' modeling for the relicensing scenario, when stated within the Company's NPV framework, was $909 million.[382]

Mr. Jester also examined the Company's business case by including a scenario in which relicensing relied upon the levels of capital spending contained in the WSP report instead of the levels that the Company used in its relicensing business case.[383] He explained that this substitution is important because [redacted][384] Mr. Jester asserted that when relicensing is considered with the same capital costs contained in the WSP report,[385] the cost of relicensing all 13 dams is less than the sale & PPA, while a differentiated strategy that considered each dam individually could have an even lower overall cost.[386] Mr. Jester further 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. Or the Commission must conclude that Confluence Hydro's business case does not adequately support reasonable and prudent spending and will therefore present a future dam safety problem.[387]

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[382] See Exhibit AB-11, p. 4.
[383] 3 Tr 631.
[384] Conf 3 Tr 1173.
[385] Notably, in providing his figures to support this assertion, Mr. Jester also explained that his NPV analysis included the additional effect of land value, which is discussed in a separate section of this PFD *infra*. See 3 Tr 631.
[386] 3 Tr 632.
[387] 3 Tr 632-633.

The outcome of Mr. Jester's modeling of the relicensing scenario resulted in NPV cost estimates of $1.115 billion (using 75th percentile decommissioning costs) and $1.223 billion (using 97.5th percentile decommissioning costs).[388]

In his rebuttal, Mr. Blumenstock explained that even with Mr. Heidemann's adjusted turbine refurbishment costs, the estimates remain within normal industry uncertainty, and those adjustments would only raise the relicensing scenario's costs, further reinforcing that selling the facilities is the most cost-effective option.[389]

Mr. Blumenstock stated that, regarding ABATE's relicensing scenario, it assumes O&M reductions without supporting achievability of those reductions and treats entirely hypothetical generator upgrades as if they were fully feasible and licensable.[390]

Mr. Blumenstock responded to ABATE's challenge to capital costs by stating that the Company used its Long-Term Financial Plan and 10-Year Capital Plan, which are the Company's planned expenditures for the next 10 years, and relied upon WSP's estimates for years beyond 2035.[391] He specified that in some instances the Company replaced some WSP inputs to reflect the newest and best available information.[392] Further, he added that because WSP provided overhaul costs in long intervals, applying a multi-year average was "a reasonable way to capture ongoing capital for dam-safety and asset-integrity needs in the out-years."[393] Mr. Blumenstock contended that ABATE relied too heavily on older WSP estimates while ignoring the Company's newer, more detailed

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[388] 3 Tr 637, 638.
[389] 3 Tr 91.
[390] 3 Tr 97.
[391] 3 Tr 97.
[392] 3 Tr 97-98.
[393] 3 Tr 98.

engineering assessments for near-term projects. He added that ABATE's approach solely relies on WSP's overhaul cycle and omits the Company's ongoing capital "for impoundment and civil structures and potential FERC-driven findings" making ABATE's projections imprudent.[394]

Regarding O&M costs in the relicensing scenario, Mr. Blumenstock explained that the Company's rising O&M projections are driven by required major maintenance for an aging hydro fleet and newly mandated FERC Part 12D Assessments, both of which are programmatic obligations rather than discretionary spending.[395] He stated that ABATE provided no evidence to discount or flatten these needs and failed to account for the substantial, recurring workload and costs associated with the modern safety requirements reflected in the Company's forecast.[396]

Overall, Mr. Blumenstock opined that "ABATE's results rely on unduly optimistic modeling choices, omission of material regulatory and environmental obligations, and energy-only benchmarking that does not reflect the PPA's liability risk transfer."[397] He contended that when appropriate risks and compliance costs are included, ABATE cannot show that its alternative proposals are less costly than the proposed sale and PPA.

Mr. Blumenstock argues that Mr. Jester incorrectly assumes Consumers would incur the same relicensing capital costs as Confluence under a sale scenario, which leads him to eliminate necessary company overheads and cut projected capital spending to an unrealistic 53.4% of the utility's forecast. He emphasizes that Consumers Energy's cost

[394] 3 Tr 98.
[395] 3 Tr 98.
[396] 3 Tr 99.
[397] 3 Tr 99.

structure, overhead needs, and long-term risk profile differ significantly from that of Confluence, making Mr. Jester's assumption unreasonable.[398]

In his rebuttal, Mr. Andrews stated that Mr. DeCooman did not adequately address the Company's: (1) approximately 40% inflation of site-specific capital estimates and inclusion of recurring capital expenditures of $22.1 million per year; (2) doubling of historical O&M costs; and (3) failure to credit revenues associated with generator upgrades that should occur.[399] He reiterated that when these issues are adjusted, ABATE's analysis shows that relicensing is the least cost option an NPV basis.[400]

Mr. Andrews contended that Mr. Coppola's 20% capital reduction and 10% O&M reduction to the relicensing scenario were "minor and arbitrary adjustments . . . applied to an inflated baseline without correcting the specific unsupported assumptions."[401] He opined that Mr. Coppola failed to scale back the Company's inflated site-specific capital estimates and doubled O&M costs such that his estimate still overstates the cost of the relicensing scenario by $616 million compared to ABATE's analysis.[402] Further, he pointed out that Mr. Coppola did not account for generator upgrades that could increase energy production and revenues in the relicensing scenario.[403]

In rebuttal, Mr. Jester also opined that Mr. Coppola's 20% adjustment to capital expenditures and 10% adjustment to O&M expenses were entirely arbitrary.[404] He

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[398] 3 Tr 121.
[399] 3 Tr 375-377.
[400] 3 Tr 377.
[401] 3 Tr 380-381.
[402] 3 Tr 381.
[403] 3 Tr 381.
[404] 3 Tr 652.

compared Mr. Coppola's relicensing analysis to those offered by Staff and ABATE, which each made more far-reaching and detailed adjustments.[405]

ii. Briefing

The Company's briefing responded to ABATE's contentions regarding inflated capital expenditures, higher than average O&M projections, and the effect of generator upgrades. In doing so, the Company primarily repeated the rebuttal testimony of Mr. Blumenstock.[406] However, the Company included an additional argument that Mr. Andrews used the wrong relicensing scenario from the WSP report in his calculation, causing him to omit the capital costs needed to achieve the first increment of increased generation and therefore understating true upgrade costs.[407]

In its brief, Staff argues that ABATE's proposed relicensing adjustments rely on optimistic assumptions about capital, O&M, and market revenues, whereas Staff's relicense forecast uses more conservative assumptions supported by evidence in the record.[408] Because ABATE's scenario is no more likely than Staff's and depends on uncertain upgrade benefits, Staff maintains its base and sensitivity analyses better reflect the reasonable range of outcomes.[409]

The Attorney General's brief simply repeats the sensitivity analysis that Mr. Coppola carried out and concludes that the relicensing scenario, even with lower costs estimated by Mr. Coppola, would still be more costly than the sale scenario.[410]

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[405] 3 Tr 654.
[406] See Consumers brief, 41-45.
[407] Consumers brief, 45.
[408] Staff brief, 33.
[409] Staff brief, 33.
[410] Attorney General brief, 49.

ABATE's brief repeats substantial portions of Mr. Andrews' testimony relating to the Company's inflated capital expenditure, O&M, and decommissioning costs associated with the relicensing scenario, as well as its failure to include generator upgrades and associated revenue increases.[411] Of note, ABATE argues that Consumers' claim that ABATE's O&M assumptions are unrealistic is unsupported because the company relied on projections based on anticipated (rather than actual) FERC assessment results and selectively used a short 3-year average of past costs to justify much higher future spending. ABATE contends that a more reasonable approach would model O&M at historical levels with inflation, making Consumers' inflated and weakly supported estimates unreasonable.[412] ABATE also argues that Consumers' objection to its generator-upgrade modeling is baseless because the Company admitted it conducted no engineering studies or economic analyses to show upgrades are infeasible or uneconomic.[413] ABATE argues that there are benefits to relicensing under Consumers' ownership because under the sale and PPA, customers would end up funding expensive, long-lived relicensing upgrades through above-market PPA payments while the economic benefits of those upgrades would flow only to Confluence after the PPA expires.[414]

ABATE criticizes Staff's relicensing scenario for failing to correct the issues with the Company's case that ABATE identified (i.e. inflated capital and O&M costs, and no generator upgrades with accompanying increased revenue).[415] ABATE criticizes the Attorney General's relicensing scenario for essentially the same reasons and added that

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[411] ABATE brief, 10-15.
[412] ABATE brief, 12-13.
[413] ABATE brief, 13-14.
[414] ABATE brief, 14-15.
[415] ABATE brief, 22-23.

Mr. Coppola's modeling adjustments were minor and arbitrary without any underlying rationale.[416]

In its reply, ABATE repeats the points already addressed in Mr. Andrews' testimony and in its initial brief.[417] However, ABATE also disputes the Company's claim that Mr. Andrews relied on the wrong relicensing scenario from the WSP report, which the Company argues caused him to understate upgrade costs. ABATE responds that that Consumers' criticism of its use of "Relicense-Overhaul" capital costs from the WSP report is misguided because it mischaracterizes both ABATE's methodology and what a proper analysis would require. ABATE states it relied on the Company's own overhaul figures, removed unjustified contingencies, and scaled those figures to estimate upgrade costs, consistent with WSP data showing upgrades would add about $90 million.[418] ABATE argues its resulting relicensing analysis is therefore more conservative and realistic than Consumers', while Consumers' suggested method of subtracting "maintain" costs from "upgrade" costs in the WSP report is illogical and would only yield the $90 million difference already reflected in ABATE's work.[419] ABATE asserts that it included a full capital expenditure estimate of roughly $914 million for relicensing upgrades, and Consumers' claims are unsupported and do not reflect how upgrade costs should be calculated.[420]

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[416] ABATE brief, 25.
[417] See ABATE reply, 9-11.
[418] ABATE reply, 12.
[419] ABATE reply, 12.
[420] ABATE reply, 12.

iii. Analysis

Several topics of contention emerge from the parties' concerns about the Company's relicensing scenario.

First, there are significant concerns regarding decommissioning costs and modeling that must be considered within the relicensing scenario.

The same concerns identified in the previously discussed decommissioning scenario, *supra*, likewise apply to the relicensing scenario because the relicensing scenario culminates in the decommissioning of the dams upon expiration of their renewed 50-year licenses. Accordingly, the substantial risk that decommissioning costs have been meaningfully overstated is embedded within the relicensing scenario and must be given due consideration. Further, Staff is correct that the Company's modeling, which considered decommissioning all 13 dams over two years, is unrealistic even as a modeling simplification. Instead, this PFD prefers Staff's modeling that extended the end date of the modeling period to 2098 to provide for more realistic decommissioning timelines.

Second, the evidence supports some components of the Company's relicensing capital cost estimates, but significant uncertainties remain regarding both the recurring capital expenditure amount and site-specific cost adders.

ABATE primarily challenged two aspects of the Company's capital expenditure estimates: (1) annually recurring $22.1 million capital expenditures for the dams beyond those expenditures needed for relicensure and periodic rehabilitation, and (2) site-specific engineering cost adders (in aggregate roughly 40%) beyond costs estimated by WSP, which already contained a 35% increase for overhead.

This PFD agrees with the Company that it is not necessarily improper to add additional annual capital expenditures because the relicensing scenario must account not only for relicensing costs, but also for the general costs of owning and operating the dams over the 50-year license period. These costs could reasonably include annual capital expenditures on the dams. However, the $22.1 million annually recurring figure may or may not be a reasonable approximation of what such costs should be. The Company selected $22.1 million because it was the three-year average capital spend for 2018-2020, which were ostensibly years before large investments being made in major spillway projects.[421] However, it is unclear if this average is truly representative of past costs generally given the three-year timespan of the average and the lack of any expenditure data for other years for comparative evaluation.[422] Given that this expenditure is applied annually for decades into the future, even small differences would amount to very large sums. Further, it is unclear whether capital expenditures should be expected to continue at past levels after significant upgrades are made to overhaul the dams to achieve relicensure. Accordingly, the inclusion of a recurring annual capital expenditure is not inherently unreasonable, but the $22.1 million amount is certainly subject to question.

It is not entirely clear if the Company, in rebuttal testimony and briefing, specifically addressed ABATE's contention that it increased WSP's site-specific estimates by 36% to 79% with most facilities seeing an increase of roughly 40%. In general, Consumers defended its relicensing scenario stating that it replaced older WSP inputs if the Company

[421] See Exhibit AB-14, p. 20.
[422] In Exhibit AB-14, p. 20. Mr. Blumenstock provided capital expenditures for 2018, 2019, and 2020, but did not include capital expenditures for other years as doing so would not have been necessary to answer the question posed in discovery.

had newer engineering that reflected the best available information.[423] However, it is not clear if that argument is directed at rebutting the aggregate 40% cost adder or if it addresses the multi-year average capital expenditure costs challenged by ABATE.

In any event, while this PFD agrees that it is preferable to utilize updated information for estimates rather than older and non-specific estimates from studies, the Company has not clearly explained the basis for the substantial site-specific cost adders or demonstrated that they are not at least partially accounted for in the contingencies already included in the WSP estimates.

Third, the Company's increased O&M projections have some support in the record but are highly speculative given that they estimate the results of future FERC assessments.

Consumers offered two reasons for roughly doubling the O&M expense from 2027 to 2028 by adding $1 million per dam and then assuming 2% escalation thereafter. These reasons were: (1) higher major maintenance levels for an aging fleet, and (2) new FERC Part 12D comprehensive assessment activities plus remediation of any findings.[424] Regarding major maintenance, the Company simply asserts that its planning shows a step-up in major maintenance reaching $10.3 million in 2030, although no specific justification was provided in testimony.[425] Mr. Blumenstock provided more detail regarding FERC Part 12D assessments, but the Company appears to have simply estimated that these new safety assessments and remediation will increase O&M by approximately $1

[423] See 3 Tr 97, 98.
[424] 3 Tr 98; see also Exhibit AB-14, pp. 17, 23-24.
[425] 3 Tr 98.

million annually per dam.[426] Accordingly, the Company provided some justification for anticipating higher O&M costs, but the projections are sufficiently speculative that they should be relied upon only with considerable caution.

Fourth, this PFD concludes that the potential value of generator upgrades in the relicensing scenario remains uncertain.

ABATE presented modeling which projected generator upgrades providing a significant increase in production and therefore a significant increase in revenue to offset the cost of the upgrades and relicensing. The Company, on the other hand, did not evaluate upgrading the generators or whether the cost of upgrades could outweigh their value.[427] Nevertheless, Mr. Blumenstock still opined that the cost of upgrades would far outweigh the value of incremental energy and capacity.[428] This PFD does not accept ABATE's upgrade scenario outright as the Company is correct that there may be complications, operational constraints, or other factors that sharply limit the ability of generator upgrades to meaningfully increase output and reduce the costs of the relicensing scenario.[429] But this PFD also does not accept outright Mr. Blumenstock's view, which entirely dismisses the upgrade scenario without any engineering study or economic analysis being performed. Instead, this PFD concludes that the feasibility and value of generator upgrades in the relicensing scenario cannot be fully resolved on the present record.

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[426] See 3 Tr 99; Exhibit AB-14, p. 17.
[427] Exhibit AB-14, pp. 18, 19.
[428] See 3 Tr 97.
[429] See 3 Tr 97.

Fifth, this PFD agrees with MHRC that the differing cost estimates related to relicensing offered by Consumers and Confluence create a dilemma in evaluating the comparative merits of the sale and the relicensing scenarios. Specifically, if the costs to relicense and then maintain the dams is as high as estimated by Consumers, then it should be a highly questionable decision for Confluence to purchase the dams. However, that quandary is analyzed in greater detail in Section C(1) of this PFD, *infra*, in the subsection regarding concerns about Confluence's financial capabilities.

Sixth, this PFD agrees with criticisms leveled by ABATE and MHRC that the Attorney General's relicensing estimate, as put forward by Mr. Coppola, lacks supporting explanation.

Just as with Mr. Coppola's decommissioning estimate, his relicensing estimate contained seemingly arbitrary adjustments (20% for capital expenditures and 10% for O&M) that were unsupported by any specific underlying reasoning or rationale. Accordingly, this PFD does not regard the Attorney General's relicensing cost estimate as a thorough or rigorous review of the reasonableness of the scenario's costs. Just as with the Attorney General's decommissioning estimate, it provides relatively little added value compared to the more detailed analyses of other parties, and it could more aptly be thought of as akin to a sensitivity variation of the Company's model.

In sum, this PFD concludes that significant questions remain about the Company's relicensing scenario given the questionable nature of decommissioning costs embedded in this scenario as well as uncertainties related to capital expenditures and O&M costs. Further comparative analysis of the different business cases takes place in Section (B)(1)(e) of this PFD, *infra*.

d. Alternative & Non-Power Scenarios

i. Testimony

Mr. DeCooman testified that the Company did not consider any decommissioning options other than full removal for the hydro fleet or individual dams, rejecting alternatives like partial removal, no-power generation, and local ownership as nonviable.[430] He testified that the Company confirmed that it was an option under FERC's license surrender process to leave the dam in place and turn ownership over to another entity.[431] However, the Company declined to provide an analysis of such an option because it believed the dams would not be used and useful for generating electricity (thereby preventing the Company's ability to recover costs under the Commission's standards), and local communities likely lacked financial resources to operate the dams.[432]

Mr. DeCooman testified that the Company provided no evidence to support its claim that cost recovery would be impossible under partial removal or no-power scenarios because the Commission has historically allowed recovery of reasonable decommissioning costs for facilities no longer used and useful.[433] He emphasized that ongoing capital and O&M costs after decommissioning have previously been approved in rate cases, and the Company acknowledged this precedent despite asserting such costs would be significantly higher for hydro facilities with retained impoundments.[434] Mr. DeCooman also asserted that the Company provided no evidence to support its claim that local ownership of dams under partial removal or no-power scenarios is unfeasible,

[430] 3 Tr 832.
[431] 3 Tr 833.
[432] 3 Tr 832.
[433] 3 Tr 833.
[434] 3 Tr 834.

and it is unclear whether communities were given detailed cost information or alternative options beyond assuming costly full hydroelectric operations.[435] He opined that the Company identified challenges to consider regarding partial removal or no-power generation scenarios, but the Company has not explored those challenges to the point where they could be ruled out as viable alternatives that aligned with the desires of local communities.[436]

Ms. Mistak testified that the WSP report included options addressing partial decommissioning, but they involved assumptions that did not align with her experience in such scenarios. She explained that the partial decommissioning estimates included construction of weir structures and fish passages.[437] Ms. Mistak explained that, in her experience, new weir structures are unnecessary as a notch can be cut in the existing dam structure to accomplish the same goal.[438] As for fish passages, she explained that they would require discussions with state and federal agencies and would not be desirable in all scenarios.[439] She added that sea lamprey barriers, if needed, would likely be partially paid for through federal funding.[440] Ms. Mistak also noted that neither the Company nor WSP developed partial decommissioning scenarios consistent with her experience.[441]

Ms. Mistak also opined that other options existed such as renewing only the licenses of economically viable dams while decommissioning the rest. She also asserted

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[435] 3 Tr 834-835.
[436] 3 Tr 835.
[437] 3 Tr 419.
[438] 3 Tr 419.
[439] 3 Tr 419.
[440] 3 Tr 419.
[441] 3 Tr 420.

that communities that wished to retain the impoundments created by dams could pursue the establishment of a legal lake level under part 307 of the Natural Resources and Environmental Protection Act, and if enacted, a Circuit Court order could enable a special tax assessment district of benefitted property owners to defray the cost of establishing and maintaining the dam.[442]

Mr. Andrews testified that non-power operation of a dam is possible when continued generation is uneconomic or undesirable, but reservoir retention may serve a community or environmental purpose. He noted that WSP analyzed the cost of such scenarios in its reports (See Exhibits A-8 and A-9); however, the Company declined to consider such scenarios. Mr. Andrews stated that through discovery, the Company claimed that non-power operation was not feasible because the dams would not be used and useful for generation (preventing cost recovery for the Company) and local communities likely lacked financial resources to maintain the dams.[443] However, Mr. Andrews contended that this position addressed cost recovery mechanics rather than the actual cost of non-power generation as an option. He further explained that the Commission has the authority to determine whether costs are reasonable and recoverable when incurred in the public interest, and the Commission could determine that non-power operation of the dams was in customer and community interest.[444]

Mr. Andrews asserted that total costs for non-power operation in WSP's report (Exhibit A-9) were just $55.3 million, or 4% of total decommissioning costs, while ongoing

[442] 3 Tr 422.
[443] 3 Tr 345.
[444] 3 Tr 346.

O&M was estimated to be only $2.6 million.[445] Mr. Andrews acknowledged that non-power generation would still require major capital investments for long-term compliance with dam safety, but he contended that non-power operation resulted in a NPV of about $338 million, or 55% less expensive than the proposed sale and PPA.[446] He concluded that non-power operation is a feasible and lower-cost alternative and that the Company's failure to examine this option represented a major omission in its analysis.[447] When translated into the Company's preferred NPV framework, ABATE's non-power scenario had an estimated cost of $977 million.[448]

In his rebuttal for the Company, Mr. Blumenstock recalled testimony in Case No. U-21224 in which Mr. DeCooman opined that the correct analysis for determining the reasonableness of investment in the Company's dams was a comparison to the value that they provided through the sale of capacity and energy. He specified that Mr. DeCooman made clear that local communities should share the responsibility for funding any non-energy benefits otherwise ratepayers would be subsidizing the cost of projects that would largely serve to benefit only local communities. Accordingly, Mr. Blumenstock opined that the Company should not expect rate recovery from investments in dams that do not provide capacity or energy to customers.[449] Thus, he opined that a partial decommissioning scenario is not realistic because it would involve the Company making perpetual post-retirement investments in dams that would not provide energy or

[445] 3 Tr 345-346.
[446] 3 Tr 346-347; see also Exhibits AB-1 lines 67-86 and AB-2.
[447] 3 Tr 347.
[448] Exhibit A-11, p. 3.
[449] 3 Tr 81.

capacity.[450] Mr. Blumenstock agreed that utilities have previously been allowed to recover certain ongoing post-retirement costs, but he explained those costs were tied to unavoidable environmental and regulatory obligations at coal plants. He argued that ongoing dam-related costs are different because they are avoidable, substantial, and would still require ongoing safety, maintenance, and technical work unless the dams are fully removed.[451]

In response to Mr. Andrews, he emphasized that ABATE's non-power partial decommissioning scenario omitted material obligations that follow from retaining the dams and impoundments such as continuing dam safety expenses, spillway and structure rehabilitation, and environmental compliance costs.[452] He stated that there is no definitive recovery mechanism for long-lived safety and compliance mechanisms for assets that are not used and useful, which creates intolerable financial uncertainty for the Company. He stated, "[l]et me be clear, Consumers Energy will not consider or pursue a non-power partial decommissioning approach."[453]

In response to Ms. Mistak, Mr. Blumenstock stated that continuing to operate the dams until their licenses expire and deciding later which ones to keep would forfeit the main cost advantage of selling now, which is avoiding large near-term capital investments. He added that delaying these investments is not feasible because FERC is unlikely to allow continued operation without required upgrades, and both Staff and the Commission have already shown reluctance to approve such spending given the limited

[450] 3 Tr 81.
[451] 3 Tr 85.
[452] 3 Tr 96.
[453] 3 Tr 96.

customer value.[454] He repeated that Consumers would not pursue any decommissioning approach requiring future investments in perpetuity without an explicit guarantee of recovery from the Commission, which he did not expect the Commission to issue.[455] He acknowledged Ms. Mistak's suggestion that communities could take ownership and fund improvements through tax assessments; however, he noted that she provided no supporting analysis. He added that the Company spoke with local communities about ownership, and except for the Allegan community, there was "no appetite for ownership" and "no ability or desire to raise taxes" such that a special assessment district was not realistic.[456]

Further, Mr. Blumenstock opined that turning over ownership to an entity that lacks technical expertise or adequate financial support would result in the owner being unable to safely operate a dam.[457] He acknowledged that the Company never provided communities with the cost of ongoing ownership; however, he stated that the Company showed communities the relicensing costs, which "would be a close estimate to ongoing costs[.]"[458] He testified that local communities have no financial ability to fund such large ongoing costs, and that only two communities identified any funding available for the dams, which was "far less than any reasonable estimate of ongoing costs."[459]

In her rebuttal on behalf of the Company, Ms. Branneman stated that community discussions sometimes focused on what would occur if Consumers did not maintain

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[454] 3 Tr 101-102.
[455] 3 Tr 102.
[456] 3 Tr 102-103.
[457] 3 Tr 84.
[458] 3 Tr 86.
[459] 3 Tr 86.

ownership of the dams. She explained that in some public meetings, community members referenced dams in Midland and Gladwin Counties, and how residents near those dams were self-funding to keep their dams.[460] However, she specified that, to the best of her knowledge, the only community that expressed serious interest in taking over ownership or operation of a dam was the Calkins Bridge community, which is based around the Lake Allegan impoundment.[461]

In rebuttal for ABATE, Mr. Andrews criticized Staff for taking interest in a non-power operation scenario but failing to provide a quantitative analysis for such a scenario. He reiterated that ABATE's quantitative analysis showed that non-power operation was $332 million less than the sale scenario on a NPV basis.[462]

In rebuttal for MHRC, Mr. Jester opined that certain witnesses presented a false dichotomy of choosing between the sale to save the dams or proceeding with full decommissioning. He opined that there are other options including relicensing, non-power operation maintained by Consumers, or partial decommissioning.[463]

ii. Briefing

In briefing, the Company asserted that the estimates proposed by ABATE "are not a realistic estimate of the costs associated with non-power operation or any other form of partial decommissioning."[464] Consumers asserts that WSP noted that additional capital improvements for dam safety, spillways, and environmental compliance would be needed under non-power or partial decommissioning scenarios, and these additional costs cannot

[460] 3 Tr 217.
[461] 3 Tr 217.
[462] 3 Tr 378.
[463] 3 Tr 656-657.
[464] Consumers brief, 24.

be ignored. Consumers asserts that ABATE only estimated $544 million in capital expenditures for its modeling from 2027-2036, but the Company estimated $1.131 billion in that timeframe in its relicensing scenario (Exhibit A-6), and ABATE simply assumed that the Company could perform those same safety upgrades for less than half the cost in a non-power scenario.[465]

Consumers further argues it would have to indefinitely continue capital investments in a non-power scenario, and such costs would total $4.755 billion out to the 2080s if they track the Company's relicensing scenario.[466] Consumers states that maintaining dams in a non-power state would mean they are not used and useful for the regulatory purpose of recovering costs, and this would imperil cost recovery for the Company.[467] The Company rejects Mr. DeCooman's suggestion that the Company might recover capital and O&M costs after the dams are no longer used and useful based upon certain limited past precedents for other kinds of generating plants. Instead, the Company points out that costs to continue maintaining dams are extensive and continue indefinitely, and in discovery neither Staff, the Attorney General, nor ABATE would commit to supporting the Company's future cost recovery for the dams if they did not generate power.[468] Consumers reiterates that it will not consider partial decommissioning or a non-power approach and will proceed with full decommissioning if the proposed sale is denied.[469]

In its brief, Staff argues that Consumers unreasonably limited its analysis to full decommissioning despite potentially viable, cost-saving partial-removal and

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[465] Consumers brief, 25.
[466] Consumers brief, 25.
[467] Consumers brief, 26-27.
[468] Consumers brief, 28-29.
[469] Consumers brief, 29.

non-power-generation options that the Company refused to evaluate or present to communities. Staff argues that Consumers misrepresents past Staff testimony because that earlier case (i.e. Case No. U-21224) involved evaluating proposed capital investments, not decommissioning, and therefore provides no basis for claiming Staff would oppose cost recovery under partial-removal or non-power-generation scenarios, which Staff would instead assess based on what best serves all affected parties. Staff asserts that Consumers' attempt to apply a blanket standard is meritless, and no evidence shows that these alternative decommissioning options would be unreasonable or imprudent.[470] Staff argues that the Company's refusal to study partial-removal and non-power-generation options leaves the Commission without essential cost and feasibility information even though evidence shows these alternatives are viable and may offer substantial savings. Consequently, by declining to analyze these scenarios, the Company limits consideration of potentially lower-cost solutions for ratepayers and weakens its own ability to justify full-removal decommissioning if the transaction is not approved.[471]

The Attorney General's brief asserts that "[t]he big concern with any proposal that includes non-power operation or decommissioning the dams but leaving them in place is that they will continue to need maintenance and capital expenditures."[472] She argues that, to the extent that ABATE suggests that ratepayers could bear the costs of this option, that

[470] Staff brief, 38-39.
[471] Staff brief, 39, 40.
[472] Attorney General brief, 56.

recommendation should be rejected because facilities that are not used and useful for providing generation should not be a utility's rate base.[473]

In its brief, the DNR argues that eliminating the impoundments is not the only solution for an unprofitable dam because Michigan has a legal process that allows counties to create a special tax assessment district to fund the acquisition of dams to maintain impoundments that serve their communities.[474] The DNR points out that Midland and Gladwin counties utilized this option to protect the value that the Edenville Dam's impoundment added to those communities.[475]

ABATE's brief repeats the direct testimony of Mr. Andrews and argues that the Company's complete refusal to even consider a non-power scenario demonstrates the unreasonableness of its position.[476] ABATE argues that Consumers' criticisms of the non-power operation option are baseless because the company never actually analyzed ongoing costs, capital needs, or risks, yet still claims they would be prohibitive.[477] Consumers could not identify a specific error in ABATE's analysis and repeatedly admitted it has no supporting data or projections for the non-power scenario.[478] ABATE contends that Consumers has not shown that the proposed Sale and PPA are the least-cost or reasonable option for customers because it failed to consider or even evaluate a lower-cost non-power alternative. ABATE also argues that the failure of Staff

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[473] Attorney General brief, 56.
[474] DNR brief, 24 (citing MCL 324.30701, *et seq.*).
[475] DNR brief, 25 (citing *Heron Cove Ass'n v Midland Co Bd of Comm'rs*, unpublished opinion of the Court of Appeals, issued January 6, 2025 (Docket No. 371649) (providing background on the process followed by the counties to impellent a special tax district to maintain dams).
[476] ABATE brief, 7-8.
[477] ABATE brief, 8, 9.
[478] ABATE brief, 9.

and the Attorney General to independently evaluate a non-power option constitutes a significant omission from their respective analyses of available business cases.[479]

In its brief, Confluence responds to ABATE and contends that whether to pursue alternative scenarios like non-power operation is purely a management decision retained by Consumers that is beyond the purview of the Commission.[480]

In its reply, Staff argues that Consumers wrongly tries to apply Staff's position from a single case (i.e. Case No. U-21224) regarding major capital investments at Hardy to all future hydro decommissioning cost requests, even though the circumstances are fundamentally different. Staff states: "If Staff determined that partial decommissioning was the most reasonable and prudent option for the removal of these plants from utility service, any associated decommissioning and post-close decommissioning costs necessary to maintain a safe decommissioned state would be supported if found reasonable and prudent."[481]

In its reply, ABATE contends that Consumers' objections to its cost estimate are baseless because Consumers' own relicensing cost projections are dramatically inflated, unsupported by engineering analysis, and therefore unreliable as a basis for challenging ABATE's lower cost projections.[482] ABATE argues that Consumers' claim that maintaining non-power assets would be imprudent is unsupported because local communities want the facilities preserved and the Company performed no analysis to substantiate its assertions about safety, environmental risk, or capital impacts. ABATE concludes that

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[479] ABATE brief, 24, 26.
[480] Confluence brief, 5 (citing *Union Carbide Corp v Pub Serv Comm*, 431 Mich 135, 148-149; 428 NW2d 322 (1988)).
[481] Staff reply, 6.
[482] ABATE reply, 6.

Consumers' refusal to meaningfully evaluate the non-power option, despite it being a federally recognized approach analyzed by WSP, shows that the proposed Sale and PPA are not reasonable.[483] ABATE specifies that while it is not advocating for ratepayers to bear the cost of a non-power option in this proceeding, even if ratepayers were to bear that cost, it is still more cost-effective than the proposed sale and PPA.[484]

iii. Analysis

Two primary topics of contention emerged from the parties' concerns about the Company's lack of a partial decommissioning or non-power scenario. Each will be evaluated below.

First, this PFD agrees that the Company should generally not expect to recover costs for assets that are no longer used and useful, making a partial-decommissioning or non-power scenario wherein Consumers continues to own the dams undesirable from the Company's perspective. However, if such a scenario were shown to be lower-cost than other options like the proposed sale or full decommissioning, continued cost recovery could still be reasonable on the basis that it would be a net benefit to ratepayers. ABATE's modeling raises that possibility, and the Company's failure to even consider the option leaves its evaluation incomplete.

Second, there is also the possibility under state law that local communities could assume ownership by establishing a special assessment district to fund maintenance of a dam.[485] Mr. Blumenstock discounted this option, noting that communities (other than

[483] ABATE reply, 7.
[484] ABATE reply, 8.
[485] See MCL 324.30701 *et seq.*

the Lake Allegan community surrounding the Calkins Bridge dam) expressed no interest in ownership, and they did not desire to raise taxes.[486] While reluctance to an increase in taxation is understandable, communities facing the potential loss of the impoundments may view a tax assessment as a preferable, if still unpalatable, alternative. Accordingly, this option should not be dismissed without further evaluation. However, this PFD also acknowledges that it is likely that the rural nature of most of the communities surrounding the impoundments, and the high cost of maintaining certain dams, may make this option unfeasible for many of the dams. Still, where the option appears potentially feasible and there is demonstrated community interest, such as at Lake Allegan, it should not be discounted.

In sum, this PFD agrees with Staff and ABATE that the Company's analysis is incomplete because it fails to meaningfully assess potentially viable and lower-cost alternatives. Although these alternatives may not, in the end, emerge as the most reasonable course of action, their absence leaves a gap in the Company's presentation that should not be overlooked. Further comparative analysis of the different business cases takes place in subsection (B)(1)(e) of this PFD, *infra*.

e. Comparative Analysis of Business Cases

i. Testimony and Positions of the Parties

Mr. Blumenstock specified that Exhibit A-7 presented the Company's variance analyses to evaluate the potential range of outcomes for each business case by adjusting variables to illustrate both high- and low-end effects on the NPV of costs identified in

[486] 3 Tr 102-103.

Exhibits A-4, A-5, and A-6.[487] He provided specific details regarding the adjustments made in each sensitivity case.[488] He contended, "It is clear from the graphical variance summary [presented in Exhibit A-7] that selling the Facilities is the lowest cost option. It also has the least cost-risk based on the relatively narrow range of costs that result after applying variation analysis."[489]

Mr. Coker performed a revenue requirement analysis for the business cases based upon costs provided by Mr. Blumenstock, and the analysis confirmed that the sale scenario was the least costly option.[490] Mr. Coker also analyzed the effect of the three scenarios on customer rates to confirm that the sale scenario had the least effect.[491] The Company also asserts that intervenors failed to perform a rate impact calculation using their own revised decommissioning assumptions such that, despite their work, no intervenor has actually offered any evidence that approving the sale would have an adverse impact on customer rates.[492]

For convenience, the results of the Company's business case modeling are reproduced below:

Consumers Energy's Modeling Results NPV ($ millions)[493]			
	Low	Base Case	High
Sale & PPA	$1,154	$1,252	$1,378
Decommission	$1,336	$1,777	$1,899
Relicense	$1,532	$1,842	$2,118

[487] 3 Tr 65.
[488] 3 Tr 64-67.
[489] 3 Tr 67.
[490] 3 Tr 234.
[491] 3 Tr 236-237.
[492] Consumers brief, 16.
[493] These values are derived from the Company's Exhibit A-7.

Mr. DeCooman identified concerning issues in the Company's Exhibit A-7, which provided a comparison of the three business cases and the sensitivity analyses.[494] He opined that the Company's sensitivities contained assumptions that were either unsupported or provided insufficient variance to account for all realistic risks.[495] For the sale case, these issues included failure to adjust replacement power costs for inflation, failure to vary the production output under the PPA with the amount of replacement power, and the omission of known potential price adders under the PPA.[496] For the decommissioning case, he explained that these issues included failure to account for inflation of replacement power costs and unrealistic cost adders with no variation for the high end sensitivity.[497] For the relicensing case, he stated that the Company simply added or subtracted 15% multipliers to the base NPV without any support for how that multiplier was derived.[498]

Mr. DeCooman presented a graphical summary of the NPV bands for each business case in Exhibit S-1.22, and he further detailed the adjustments that Staff made to the Company's underlying business cases.[499] He testified that Staff's updated analysis did not change the overall conclusion that selling the dams was the lowest cost-risk option on a NPV basis when considering base assumptions; however, Staff's analysis significantly narrowed the price gap between base assumptions for selling the dams and

[494] 3 Tr 827.
[495] 3 Tr 827.
[496] 3 Tr 828.
[497] 3 Tr 828.
[498] 3 Tr 828.
[499] See generally 3 Tr 836-843.

decommissioning or relicensing them.[500] For convenience, the results of Staff's modeling is reproduced below:

Staff Modeling Results NPV ($ millions)[501]			
	Low	Base Case	High
Sale & PPA	$1,314	$1,344	$1,398
Decommission	$1,188	$1,553	$2,047
Relicense	$1,673	$1,795	$1,999

Mr. Coppola testified that his analysis resulted in lower NPV costs across all three business cases when compared to the Company's analysis; however, it still showed that the sale scenario was the option with the least cost.[502] For ease of reference, the result of Mr. Coppola's analysis is reproduced below:

Attorney General Modeling Results NPV ($ millions)[503]	
Sale & PPA	$1,169
Decommission	$1,492
Relicense	$1,525

For ABATE's modeling, Mr. Andrews utilized a revenue requirement framework for NPV figures, which differed from the approach taken by the Company and other parties. That practice resulted in values reported throughout Mr. Andrews' testimony which may appear out-of-step with those from other parties. ABATE translated its modeling results into the same NPV framework utilized by the Company,[504] and for ease of reference, those results are reproduced below:

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[500] 3 Tr 844. He explained that in the Company's Exhibit A-7, the Decommissioning and Relicense base cases had NPVs approximately 42% and 47% higher than the Sale base case, respectively, whereas in Staff's Exhibit S-1.22, the Decommissioning and Relicense base cases had NPVs approximately 15% and 33% higher than the Sale base case, respectively.
[501] These figures are drawn from Exhibit S-1.22.
[502] 3 Tr 294. See also Table B on that page.
[503] These values are derived from Table B at 3 Tr 294 (which references Exhibits AG-17 through AG-19).
[504] See ABATE brief, 27-28. In each of the business case sections above, this PFD recounted the cost values as originally reported in Mr. Andrews' testimony, i.e. using the revenue requirement framework.

ABATE Modeling Results NPV ($ millions)[505]	
Sale & PPA	$1,309
Decommission	$1,209
Relicense	$909
Non-Power	$977

For convenience, Mr. Jester's modeling results on behalf of MHRC, which utilized the USGS decommissioning model, are shown below:

MHRC (Jester) Modeling Results NPV ($ millions)[506]	
Sale & PPA	$1,421
Decommission	$1,105 (97.5th percentile decommissioning costs) or $706 (75th percentile decommissioning costs)
Relicense	$1,223 (97.5th percentile decommissioning costs) or $1,115 (75th percentile decommissioning costs)

Regarding the ultimate results of Staff's modeling adjustments, Mr. Blumenstock asserted that they "made minimal difference in base case outcomes and sensitivities" and still demonstrated that the sale and PPA was the lowest cost option with the least price risk.[507]

Mr. Jester testified that Staff's assessment of cost risk is flawed because it compares the relatively certain cost of the sale and PPA to the highly uncertain Class 5 estimates for relicensing and decommissioning. He further stated that Staff's analysis does not support approving the proposed sale with a 30-year PPA because it fails to overcome the deficiencies in the Company's underlying analyses.[508]

However, this PFD also included a summary of Mr. Andrews' testimony that specifically restated the results consistent with the Company's NPV framework as shown in Exhibit AB-11.

[505] These figures are derived from Exhibit AB-11.

[506] These figures are derived from the charts at 3 Tr 637-638. The financial data on Mr. Jester's charts was shown in thousands of dollars and has been converted to millions of dollars in this PFD to be consistent with the presentations of other parties.

[507] 3 Tr 86-87.

[508] 3 Tr 663.

In briefing, Staff replied that, by its very nature, the sale scenario has limited cost risk. Staff further asserts that, contrary to Mr. Jester's arguments, even further work refining the decommissioning and relicensing scenarios would not meaningfully narrow the cost uncertainty compared to the relatively narrow range of results for the sale scenario.[509]

In its reply brief, MHRC rejects the Company's argument that intervenors failed to provide any evidence about the ultimate effect on customer rates because they failed to perform a rate impact calculation using their decommission cost estimates. MHRC explains that it and several other intervenors provided decommissioning cost estimates that "compare apples to apples" with the Company's framework such that those costs naturally convert into rate impact with or without a final rate analysis.[510]

To facilitate easier comparisons, this PFD provides the following chart that summarizes selected modeling results offered by the parties. The chart is not a full representation of all the parties' modeling results, and it excludes some modeling results or sensitivity analyses that are contained in the record. As such, it should be regarded as incomplete and used to provide a general and non-comprehensive overview of the parties' results:

[509] Staff brief, 35.
[510] MHRC reply, 16.

Selected Modeling Results of the Parties NPV ($millions)					
	Consumers[511] (Base case)	**Staff**[512] (Base case)	**Attorney General**[513]	**ABATE**[514]	**MHRC**[515]
Sale & PPA	$1,252	$1,344	$1,169	$1,309	$1,421
Decommission	$1,777	$1,553	$1,492	$1,209	$1,105
Relicense	$1,842	$1,795	$1,525	$909	$1,223
Non-Power	N/A	N/A	N/A	$977	N/A

ii. Analysis

This PFD begins by observing that, as Consumers acknowledged, it bears the ultimate burden of persuasion in this case.[516] To that end, seeking a favorable finding regarding whether the proposed transaction would have an adverse impact on customer rates under MCL 460.6q(7)(a), Consumers argues that "[t]he Commission should find that the sale of the Company's river hydroelectric plants to Confluence Hydro, together with the PPA, are the lowest cost option and will have a beneficial impact on customer rates compared to the decommissioning and relicensing options."[517] Yet, the record falls short of sustaining that proposition.

First, there are excellent reasons to believe that the Company's decommissioning and relicensing estimates are meaningfully overstated. These reasons are articulated in the analyses sections above that pertain to those scenarios, see Sections B(1)(b)(*iii*) and

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[511] This scenario represents the Company's base case (rather than its high or low sensitivities) as reflected on Exhibit A-7.
[512] This scenario represents Staff's base case (rather than its high or low sensitivities) with data drawn from Exhibit S-1.22
[513] These values represent the Attorney General's only modeling scenario derived from Table B at 3 Tr 294 (which references Exhibits AG-17 through AG-19).
[514] These figures are derived from Exhibit AB-11.
[515] These numbers are derived from the chart at 3 Tr 638; it represents an analysis which included dam removal costs at the 97.5th percentile of the USGS model. The financial data on Mr. Jester's chart was shown in thousands of dollars and has been converted to millions of dollars in this PFD to be consistent with the presentations of other parties.
[516] Consumers reply, 22.
[517] Consumers brief, 16.

B(1)(c)(*iii*), *supra*, and to avoid repetition they are expressly incorporated herein by reference.

Second, aside from the previously referenced reasons to believe that the Company's decommissioning and relicensing costs are overstated, this PFD generally agrees with Staff's criticisms of the Company's variance analysis of its business cases in Exhibit A-7.[518] This PFD further finds that Staff's variance analysis was more robust and better supported.[519]

Third, while this PFD does not wish to attempt to establish a specific quantitative cost estimate, examining a possible range based upon the conclusions reached about the business cases would be useful in providing at least a very rough basis for comparison. As previously found by this PFD: (1) the Company's two cost adders, while not totally devoid of merit, were not fully and adequately supported and needed to be significantly reduced in scale, and (2) the WSP estimate, and thus the Company's resulting estimate, included several atypical decommissioning costs that would likely not be incurred or incurred to the extent projected. It is not possible to directly map these specific conditions on to any of the parties' scenarios.

However, Staff's variance analysis provides a potentially useful framework: its low-end decommissioning estimate removes both Company cost adders, while its base case includes only the Company's environmental risk adder. If, consistent with this PFD's findings, both adders were significantly reduced, and atypical decommissioning practices were significantly scaled back, the resulting decommissioning estimate could fall

[518] See 3 Tr 828 (listing flaws in the Company's sensitivity analysis).
[519] See 3 Tr 828, 840-844; Staff Exhibit S-1.22.

somewhere between Staff's low-end case and its base case, potentially trending toward the lower bound of that range depending upon the magnitude of the reductions. This would correspond to a NPV range estimate of somewhere between $1.18 billion and $1.55 billion.[520] Again, this range is provided solely as a rough estimate of the possible effect of this PFD's conclusions and is not offered as a conclusive projection of decommissioning costs. For comparative reference, Staff's cost range for the sale and PPA extends from $1.31 billion to $1.39 billion.[521] Accordingly, it would be difficult for this PFD to conclude that the sale and PPA represented the lowest cost option given the cost overlap between these decommissioning and sale estimate ranges.

Staff's variance analysis can also help develop a rough estimate of relicensing costs that aligns with this PFD's findings. Staff's low-end relicensing sensitivity removed decommissioning cost adders and applied discounts of 15% to capital expenditures and 5% to O&M.[522] These discounts to capital expenditures and O&M could roughly address this PFD's concerns about potential overstatements in those categories. Additionally, if both decommissioning cost adders were significantly reduced rather than removed, and if atypical decommissioning practices were scaled back, the resulting relicensing estimate would likely fall somewhere below Staff's low-end figure of $1.67 billion.[523] The degree of reduction is difficult to quantify due to the inherent subjectivity of these adjustments. However, any relicensing range grounded in this PFD's findings above would still likely exceed the $1.31–$1.39 billion range Staff proposes for the sale and PPA.[524]

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[520] See Exhibit S-1.22 (Staff's modeling results with sensitivity analysis).
[521] See Exhibit S-1.22.
[522] See Exhibit S-1.22.
[523] See Exhibit S-1.22.
[524] See Exhibit S-1.22.

Additionally, there are significant questions regarding the correct extent of relicensing costs given vastly differing estimates offered by Consumers and Confluence, a topic which is discussed in greater detail in Section C(1) of this PFD, *infra*.

Fourth, this PFD agrees with Staff and ABATE that the Company's analysis is incomplete because it declined to assess potentially viable and lower cost alternatives like partial decommissioning or non-power scenarios. See Section B(1)(d)(*iii*) of this PFD, *supra*. Even if these alternatives are likely to fall short of being the most reasonable course of action, their unexplored contours leave the Company's analysis less than fully developed.

Fifth, the Company accurately contends that other parties did not perform a rate impact calculation using their own revised decommissioning assumptions. However, this PFD agrees with MHRC that the intervenors provided decommissioning cost estimates that fit within the Company's NPV framework such that those cost estimates naturally convert into rate impact even without a final rate analysis. In other words, because the intervenors' estimates integrate into the Company's framework, their comparative effect on rates is apparent even in the absence of a separate rate study.

Sixth, this PFD agrees with the Company and Staff that the sale scenario is the option with the narrowest range of potential costs after applying any sensitivity analysis. But this is necessarily true given the relatively limited variables (primarily the cost of replacement power and the starting price of the PPA) that can alter its total cost. However, having the lowest range of potential costs is not the same as having the lowest cost. In any event, the sale and PPA scenario has the lowest range of cost risk because, unlike the decommissioning and relicensing scenarios, it relieves the Company of any future

decommissioning responsibility and ostensibly shifts that responsibility to Confluence (or to any later owner of the dams if Confluence divests them).

However, shifting immense future liabilities like decommissioning to an entity that may not have the capacity or incentive to decommission the dams is an enormous risk in and of itself. The hidden cost risk that haunts the sale and PPA scenario is the possibility that decommissioning costs or other liabilities could eventually fall on the State of Michigan and its taxpayers if a future owner is unable or unwilling to bear them. This possibility is considered more fully in Section D(3) of this PFD, *infra*. But when evaluating the sale and PPA scenario, this hidden risk must be considered.

2. Land Value and Land Sale

a. Testimony

Mr. Coppola explained that the proposed sale included 32,000 acres of land in and around the dams, and that in future years Confluence could reduce the impoundment area or otherwise make large portions of this land available for sale. He proposed that, to avoid unduly enriching Confluence with the value of the land, the Commission should require that Confluence or its successors agree to turn over any such land to the State of Michigan for public use.[525]

Ms. Mistak testified that lands within FERC hydropower project boundaries are generally held available for public use and that the boundaries currently maintained by the Company include approximately 32,000 acres held open to provide a benefit to fish, wildlife, and the public.[526] Ms. Mistak testified that in a discovery response, Confluence

[525] 3 Tr 311, 325.
[526] 3 Tr 414.

stated that it does not intend to pursue any amendments to the dams' current FERC licenses to divest any of the land; however, she seized upon the Confluence's use of the word "current" to note that Confluence may seek to amend the license and divest significant project lands if it relicenses the dams.[527] She explained that if Confluence were to sell project lands, then proceeds would go to its shareholders and this would create an incentive to sell lands currently held open for public use and enjoyment.[528] Ms. Mistak added that the DNR "has witnessed a troubling pattern whereby FERC is increasingly allowing dramatic reduction in 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."[529]

Mr. Jester also testified that the sale included approximately 32,000 acres of project lands, and he explained that the Company did not account for the market value of the land in adjustments to its rate base or the business cases.[530] He opined that this failure to account for the land value could be "the subsidization of a nonregulated activity of the new entity through rates paid by the customers of the jurisdictional regulated utility" under MCL 460.6q(7)(c).[531] Mr. Jester asserted that Consumers is foregoing future revenue from selling the lands upon decommissioning, so the value of the land should appear in the business case as either a cost of the sale scenario or as revenue in the decommissioning and relicensing scenarios.[532] He presented tables showing the effect of

[527] 3 Tr 415 (citing Exhibit DNR-8).
[528] 3 Tr 415.
[529] 3 Tr 415.
[530] 3 Tr 626.
[531] 3 Tr 626.
[532] 3 Tr 626-627.

including the land value on the business cases from the perspective of both the Company and Confluence.[533]

Mr. Jester explained that FERC sometimes authorizes, even over state objections, the sale of project lands that are outside of the water rights, and Confluence could petition FERC to do so and unlock significant value.[534] He estimated that Confluence could unlock approximately $80 million in present dollars by selling project lands not required for operation of the dams and that the Commission should not assume that Confluence would refrain from selling these parcels given their significant financial incentive to do so.[535]

In rebuttal for Consumers, Mr. Coker disagreed with Mr. Jester's proposed adjustments to the business case because they rely on broad assumptions and mischaracterize how land-sale proceeds are treated in regulatory affairs. He explained that Mr. Jester improperly assumes the company could sell the land at its state-equalized value during decommissioning, even though land may sell above or below that value and could be devalued by the decommissioning itself.[536] Mr. Coker concluded that these speculative assumptions make the adjustments unreliable, and the Commission should not base its decision on them. Further, Mr. Coker testified that funds derived from the sale of assets are not credited to customers through a reduction in rate base, but rather through the regulatory treatment of any gain or loss relative to book value after transaction costs. He explained that this gain is not automatically returned 100% to customers, citing past Commission practice such as the 50/50 split approved in Case No. U-21283.[537]

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[533] 3 Tr 627, 628.
[534] 3 Tr 628.
[535] 3 Tr 629.
[536] 3 Tr 248-249.
[537] 3 Tr 249.

In his rebuttal, Mr. Monroe disputed Ms. Mistak's concerns regarding FERC allowing dramatic reductions in the project boundaries and the sale of lands. He specified that the current FERC licenses for 11 of the 13 dams provided that all lands within the project boundary as of 1992 are to remain in the boundary through the term of the license.[538] He added that those provisions were added as part of a settlement, that agencies would likely request a similar condition in future relicensing, and that Confluence has stated it does not plan to sell the land surrounding the dams.[539]

In his rebuttal, Mr. Blumenstock rejected Mr. Coppola's proposal to add a condition to the sale stating that neither Confluence nor Consumers would renegotiate the deal.[540] He objected to Mr. Coppola's suggestion that lands could be "returned" to the State of Michigan because they were never owned by the State, and he noted that land transfer would require FERC approval and Confluence already stated it does not plan to sell any of the project lands.[541]

Mr. Blumenstock also rejected Mr. Jester's suggestion that the value of the land should be included in the sale business case. Like other company witnesses, he emphasized that current FERC licenses for 11 of the 13 dams provided that all lands within the project boundary as of 1992 are to remain in the boundary through the term of the license, and any future relicensing would likely be tied to similar conditions.[542]

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[538] 3 Tr 182.20.
[539] 3 Tr 182.20 (citing Exhibit A-54).
[540] 3 Tr 130.
[541] 3 Tr 130 (citing Exhibit A-28).
[542] 3 Tr 120.

b. Briefing

The Company identifies three problems with MHRC witness Jester's treatment of land value in the proposed transaction.

First, the company argues that MHRC's claim about including land value in the business case is incorrect because utility accounting rules credit only the land's book value to rate base, with any difference between the sales price and book value recorded as a gain or loss on the sale.[543] Consumers asserts that is how it proposed to reflect land value in this transaction, and since the land value is already reflected in the calculation of any gain on sale, which will be addressed in ratemaking, it should not be added again to the business case analysis.[544] The company further explains that customers do not own utility property merely by paying rates and therefore are not automatically entitled to 100% of any land-sale proceeds, which the company has historically shared only voluntarily, often at 50%.[545]

Second, Consumers argues that even if Mr. Jester's method were valid, his assumed land value is unrealistic because much of the land is underwater, would be unstable after decommissioning, is constrained by FERC license restrictions, and is likely to lose value due to the decommissioning itself. The Company contends that tax-based valuations have no connection with true market value and therefore cannot justify Mr. Jester's assumptions.[546]

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[543] Consumers brief, 39.
[544] Consumers brief, 39.
[545] Consumers brief, 39-40.
[546] Consumers brief, 40.

Third, the Company contends that even if Mr. Jester's land value methodology was correct, the inclusion of land value still did not materially alter the analysis of the decommissioning business case that Mr. Jester performed.[547]

Regarding land use and recreational access, the Company argues that the Commission should reject Mr. Coppola's recommendation that the Commission should require Confluence to return project land to the State of Michigan if the dams cease to operate. The Company explained that this would be a major change to the negotiated deal and that the land was never owned by the State such that it cannot be "returned."[548] The Company also contends that this condition is unnecessary because disposition of the dams requires FERC approval, and FERC endeavors to ensure recreational use consistent with current use of the lands.[549]

The Company also argues that Ms. Mistak's concern that FERC could dramatically reduce project lands is unlikely given that eleven of the dams have land boundaries that cannot be changed based upon license articles and the relicensing process is a contested case such that any hypothetical reduction in project land area would be litigated.[550]

In her brief, the Attorney General argues that "it is not too premature for the Company to know what it will do in the case of decommissioning. Even if the land was not originally State land, it should still be turned over to the State once it is available for

[547] Consumers brief, 41 (inviting the reader to examine Mr. Jester's analysis by comparing the results found at 3 Tr 627 with those at 3 Tr 613).
[548] Consumers brief, 65, 75.
[549] Consumers brief, 65.
[550] Consumers brief, 65.

disposition for public use."[551] The Attorney General argues that "a clear mandate would avoid any future disputes as to how Confluence would use the freed land."[552]

In its brief, the DNR largely repeats testimony related to project lands that was provided by Ms. Mistak.[553] The DNR emphasizes that Confluence would gain 32,000 acres, 16,000 of which are not impounded, and Confluence would be free to seek to alienate a significant portion of that land in FERC relicensing.[554] The DNR emphasizes that nothing in the proposed transaction prevents this, and Confluence has only stated it was committed to the current boundaries during the life of the existing license after which it planned on engaging interested parties on the issue.[555]

MHRC's brief asserts that Consumers concedes that its sale case does not include revenues from property agreements or the value of land being sold to Confluence.[556] MHRC argues that the value of the land increases the cost of the sale and PPA business case making it more expensive in NPV than the decommissioning cases presented by MHRC or the DNR.[557] MHRC rejects as insufficient the argument by Consumers that the existing FERC licenses require all the land to remain within the project boundary and that government agencies will likely request similar conditions when relicensing occurs. MHRC recaps the testimony of Mr. Jester and Ms. Mistak to explain that FERC has shown

[551] Attorney General brief, 30.
[552] Attorney General brief, 30.
[553] See DNR brief, 12-13.
[554] DNR brief, 13.
[555] DNR brief, 13 (citing Exhibit DNR-33, p 1).
[556] MHRC brief, 33 (citing Exhibit MHRC-60).
[557] MHRC brief, 34.

a willingness to downsize project boundaries when relicensing occurs, which would allow Confluence to sell the land.[558]

In its reply, Consumers contends that an issue regarding land holdings requires clarification. Consumers states that while there are approximately 32,000 acres of land within FERC project boundaries for the dams, Consumers does not own 32,000 acres of land associated with the project boundaries.[559] The Company explains that it owns "water rights acres" which is the right to allow the flow of the river onto land that is not actually owned by Consumers.[560] The Company explains that when 16,900 acres of water rights land are subtracted from the total acreage, Consumers actually owns approximately 15,200 acres of land in fee, much of which is underwater, i.e. the lakebed of the impoundments.[561] The Company contends that the lakebed land is simply not marketable, and certainly not at the rates proposed by Mr. Jester. The Company concludes that "[t]he Commission should not adopt any of the parties' proposals related to land or land access for the reasons stated in the Company's Initial Brief. But, the Commission should certainly not, under any circumstances, attempt to direct the disposition of land that belongs to owners who are not party to this case."[562]

In her reply, the Attorney General emphasizes that the land was presumably funded in part by ratepayers, and while the land may be tied to operating facilities now, there is no reason that her proposal "cannot take effect later, when some or all of the land

[558] MHRC brief, 61.
[559] Consumers reply, 51.
[560] Consumers reply, 51.
[561] Consumers reply, 51-52.
[562] Consumers reply, 52.

is no longer needed for hydroelectric generation under the FERC license and released from the project site."[563]

In its reply, the DNR asserts that that Consumers provides no evidence contradicting Ms. Mistak's accurate point that Confluence could seek to reduce project boundaries once the current licenses expire in 2034.[564] FERC has shown a growing willingness to shrink boundaries even over agency objections, and nothing in the proposed transaction documents guarantees the existing boundaries will remain in future licenses.[565] Consumers' claim that such changes are merely "unlikely" does not rebut Ms. Mistak's testimony, based upon her experience, that FERC is increasingly allowing project boundaries to shrink over the objections of resource agencies.[566]

c. Analysis

Three disputed issues arise from the parties' concerns about the land that is part of the proposed transaction: (1) whether the land value should be included in business case modeling; (2) whether to adopt the Attorney General's proposal to impose conditions to require Confluence or its successor(s) to turn over land to the state for public use if the land is no longer being used in the operation of the facilities; and (3) the likelihood that Confluence will seek to shrink project boundaries and sell land liberated from the boundaries.

First, for many of the reasons articulated by the Company, this PFD is not convinced that it would be apt to include the land value in the business case modeling.

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[563] Attorney General reply, 7.
[564] DNR reply, 13.
[565] DNR reply, 14.
[566] DNR reply, 14.

Consumers' reply clarifies that much of the current project land is not owned by the Company in fee (i.e. it does not possess full legal ownership) and is instead water rights acreage. Further, as the Company explained, much of the land that it does own in fee is apparently the lakebed of the impoundments, which is not presently marketable and may or may not be particularly marketable even after hypothetical decommissioning. Thus, any estimate of that land's value is highly speculative. The Company's further explanation of the typical accounting treatment for land disposition further highlights the pitfall of attempting to include the land value into modeling assumptions. In any event, the Company also correctly pointed out that the inclusion of land value did not meaningfully alter the analysis of the business cases that Mr. Jester performed.[567]

Second, this PFD is not convinced that it would be proper to adopt the Attorney General's condition to require that any land eventually liberated from the project area to be turned over to the State of Michigan for public use. As the Company stated, this land was not originally owned by the State, so that land cannot truly be "returned" to the state in the ordinary meaning of the word.

Third, as the Company notes, the FERC licenses for most of the dams contain boundary-preservation provisions, adopted through a settlement agreement, that prohibit changes to project boundaries during the current license term. This makes any boundary modification unlikely in the near term. However, the possibility that Confluence or a future owner could seek boundary reductions during relicensing remains a legitimate concern. If FERC granted such a request, portions of the project land could become eligible for

[567] Compare the results of Mr. Jester's analysis found at 3 Tr 613 with those at 3 Tr 627.

private sale, potentially undermining their current public use. Although the Company is correct that any such request would be subject to challenge and litigation before FERC, the risk of post-relicensing land divestiture is not eliminated. While not raised directly by the parties, this PFD observes that one potential way to mitigate this concern would be to impose a condition to require Consumers to ensure that Confluence (or any successor owner) contractually agrees not to seek boundary reductions in any future relicensing or standalone FERC proceedings. But in any event, these considerations are not ultimately necessary for this PFD to consider further given its ultimate recommendation for the case, see Section F(2) of this PFD, *infra*.

3. The PPA and Financial Compensation Mechanism

a. Testimony

Mr. Blumenstock testified that Michigan law, specifically MCL 460.1028(8) required that the Company receive a financial compensation mechanism (FCM) for entering the PPA to purchase renewable energy from the dams.[568] He explained that Exhibit A-3 included an FCM value of 8.75%, which represented the annual cost recovery rate approved for the Company to apply to PPAs, which was based upon the pre-tax weighted average cost of permanent capital established in the Company's 2024 electric rate case, i.e. Case No. U-21585.[569] Company witness Coker provided similar testimony asserting that the proposed transaction qualified for the FCM under Michigan law.[570]

Mr. Harlow explained that the FCM is a utility incentive applied to third-party PPAs, set equal to the weighted average cost of capital and defined by statute as the pre-tax

[568] 3 Tr 59.
[569] 3 Tr 59.
[570] See 3 Tr 230-231.

weighted average cost of permanent capital.[571] He added that its purpose is to reduce utility bias when choosing between PPAs and company-owned resources in planning processes by allowing utilities to earn a return on PPAs.[572] Mr. Harlow stated that applying the Company's 8.75 percent pre-tax cost of capital to the annual PPA price and projected MWh output yields an FCM of about $6.15 million in 2027 and would yield roughly $270 million over the 30-year agreement.[573]

Mr. Harlow asserted that, while there were no errors in the Company's calculation method, the PPA price should not be utilized to calculate the FCM for two reasons. First, he opined that the proposed FCM is inappropriate because the Company already recovered its investment in the dams over the last 100+ years and would effectively be double-dipping by selling them and earning an incentive through the PPA.[574] He opined that this would set a dangerous precedent for the future and could result in utilities creating a perpetual cycle of double-dipping on assets.[575] Second, he also objected to the extremely high PPA price, starting at a minimum of $160/MWh and escalating to $327.43/MWh at the end of 30 years, which far exceed any others he has reviewed and includes not just the market value of energy, capacity and renewable energy credits but also the future value of the transfer of liabilities associated with the dams.[576] Mr. Harlow opined that it was not appropriate to approve an FCM for the PPA given the "very unique nature of this request."[577]

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[571] 3 Tr 878.
[572] 3 Tr 878-879.
[573] 3 Tr 879.
[574] 3 Tr 880.
[575] 3 Tr 880.
[576] 3 Tr 880-881.
[577] 3 Tr 881.

Mr. Harlow stated that if the Commission nevertheless believed that an FCM was appropriate, then he proposed using the $79/MWh cost of replacement power contained in the Company's other calculations because it could be a reasonable proxy for the current value of hydroelectric energy, capacity, and renewable energy credits.[578] He added that he would also support applying the FCM to the pricing range proposed by fellow Staff witness Bodiford.[579] In turn, Mr. Bodiford calculated the Company's 10-year average cost for hydropower PPAs and discovered that it was approximately $72/MWh.[580]

Mr. Harlow opined that it was more appropriate to apply the FCM to the $79/MWh figure than the $160/MWh PPA price because the PPA price includes the value of the transfer of liabilities which is not contemplated in the statute authorizing a FCM.[581] Mr. Harlow stated that if the Commission used the flat $79/MWh figure, then the FCM would total $91.13 million over 30 years compared to the Company's proposal, which would yield $270.10 million over 30 years.[582]

Mr. Coppola contended that there were four problems with the proposed FCM. First, echoing Mr. DeCooman, he explained that the $160/MWh PPA price was not the market price for energy and capacity because it included compensation for liabilities that Confluence would assume post-closing.[583] Instead, Mr. Coppola proposed using $73/MWh, the price of replacement power he identified based upon four PPAs signed by the Company in 2025; he added that this price would result in total FCM compensation of

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[578] 3 Tr 882.
[579] 3 Tr 882.
[580] 3 Tr 918.
[581] 3 Tr 882-883.
[582] 3 Tr 884.
[583] 3 Tr 297.

$84 million over 30 years instead of $270 million as proposed by the Company.[584] Second, he objected to the fact that proposed PPA price escalates by 2.5% annually and that its initial price can be adjusted upward based upon cost overruns at Hardy and Rogers dams.[585] Third, he objected that an FCM should not be applied at all because the PPA allows the Company to profit from divesting itself of the dams it owns and buying back power from those same dams.[586] Fourth, Mr. Coppola explained that the originally used FCM return rate was the 5.69% after-tax overall cost of capital, and he questions both the Company's shift to an 8.75% rate and its lack of transparency about its role in adding new language to Michigan law regarding FCMs, i.e. to MCL 460.1028(8).[587] He contended that the statute's wording is ambiguous and that a correct reading supports a lower 7.31% pre-tax rate rather than the Company's higher calculation.[588] Although he offered an alternative FCM calculation using a flat rate of $73/MWh and return of 7.31%, his overall recommendation was that the FCM should not be applied in this case.[589]

Mr. Andrews testified that the cost of the FCM essentially increases the true cost of the PPA to $174/MWh and he, like the Company, is unaware of any approved PPA/FCM combination in which a regulated utility sold its assets to a third party and then bought back the energy and capacity from the assets it sold.[590] He contended that the dams in question provided a return on rate base for the life of the asset and a complete return on investment because the total accumulated depreciation reserves are greater

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[584] 3 Tr 297.
[585] 3 Tr 297.
[586] 3 Tr 297.
[587] 3 Tr 298.
[588] 3 Tr 299.
[589] 3 Tr 299.
[590] 3 Tr 359-360.

than plant in service with a gain on the proposed sale of $21.3 million.[591] Mr. Andrews recommended rejecting the FCM explaining that FCMs exists to encourage utilities to enter into PPAs for new renewable resources, but the dams are preexisting renewable resources already owned by the Company.[592]

Further, Mr. Andrews complained that the $160/MWh PPA starting price is not justified or explained by the Company because it simply asserted through discovery that the price was the result of negotiations between Consumers and HSE and was not derived from any calculations.[593] He testified that the Company did not benchmark the PPA price to actual or forecasted MISO market prices, which for 2025 energy and capacity, averaged about $56.18/MWh or only about 35% of the PPA price.[594] He opined that Consumers did not provide sufficient evidence to support the reasonableness of the $160/MWh PPA starting price given the lack of transparent derivation, absence of market benchmarking, and lower cost alternatives.[595]

In rebuttal for the Company, Mr. Coker asserted that Consumers has already received the value of the prior investment recovery through depreciation, and Consumers was proposing to credit the full gain on the sale back to customers.[596] Accordingly, he asserted that the Company cannot earn further return on the dams, so there is no mechanism for a second recovery stream or a “cycle of double dipping” as claimed by Mr. Harlow.[597] Mr. Coker emphasized that the FCM is forward-looking and is not

[591] 3 Tr 360.
[592] 3 Tr 361.
[593] 3 Tr 356.
[594] 3 Tr 356.
[595] 3 Tr 358.
[596] 3 Tr 242.
[597] 3 Tr 242.

compensation for past ownership; further, he asserted that Staff's argument would effectively bar FCMs whenever a PPA follows a divestiture even though neither MCL 460.6t(15) nor MCL 460.1028(8) contain such a limitation.[598]

Mr. Coker responded to Staff's assertion that the inclusion of costs in the PPA price beyond energy and capacity made the application an FCM inappropriate. He asserted that Staff's theory could eliminate FCM eligibility for every utility-scale wind or solar PPA because the PPA price necessarily reflects a bundled product (energy, capacity, renewable energy credits) and costs for long-term viability of the underlying assets like payments for capital recovery, environmental mitigation, and long-term maintenance.[599]

Mr. Coker contended that the FCM must be applied to the actual contracted PPA price, not a hypothetical market value as proposed by Staff or the Attorney General, and that using a lower "market-only" price would contradict the statute and distort the FCM mechanism. He explained that the PPA price reflects a comprehensive package of risks, obligations, and long-term investments, and the FCM is meant "to compensate the utility for not rate-basing the resource, not to retroactively reprice a contract."[600]

Mr. Coker rejected Mr. Coppola's argument that the FCM rate should be 7.31%. He pointed to the language of MCL 460.1028(8), which defines how the FCM is to be calculated with reference to the pre-tax weighted average cost of permanent capital comprised of long-term debt obligations and equity of the total capital structure as determined in the utility's most recent general rate case.[601] Mr. Coker asserted:

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[598] 3 Tr 242.
[599] 3 Tr 243.
[600] 3 Tr 244.
[601] 3 Tr 244-245.

> The proper methodology for calculating the pre-tax weighted average cost of permanent capital is to first determine the ratio of total capital ($29.181 billion) to the permanent capital ($24.353 billion) and then multiply that by the sum of the pre-tax returns for long term debt, preferred stock, and common equity. This calculation results in a current FCM rate of 8.75%.[602]

Mr. Coker added that this methodology has been previously approved by the Commission in Case No. U-21816 and has been presented in Case Nos. U-21829 and U-21424 with no party contesting the rate or the calculation methodology.[603]

Mr. Coker rejected Mr. Coppola's contention that FCM payments should be based upon a fixed PPA price. He referred to MCL 460.1028(8), which states that the FCM shall be applied to contract payments and makes no reference to whether such payments may be fixed or variable over the contract term.[604]

Responding to Mr. Andrews, Mr. Coker agreed that the Commission has not previously reviewed a transaction identical to this divest-and-repurchase structure. However, he opined that the lack of precedent did not make the PPA inappropriate under the statute and that the proposed deal advances all statutory FCM objectives by shifting substantial long-term capital costs to a third-party owner and promoting non-utility procurement.[605] Mr. Coker also responded that customers' historical contributions to the dams do not affect FCM eligibility because the FCM is a forward-looking incentive unrelated to past cost recovery for assets the utility will no longer own or operate. He added that ABATE's arguments ignore the substantial future capital, O&M, and

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[602] 3 Tr 245.
[603] 3 Tr 245.
[604] 3 Tr 256.
[605] 3 Tr 246.

decommissioning expenses customers would continue to face if the company retained the dams, and the sale avoids those costs.[606]

b. Briefing

In briefing, the Company argues that proposals by Staff, the Attorney General, or others to disallow application of an FCM to the PPA, or to limit its application to only a portion of the contract payment, are unlawful. The Company contends that MCL 460.6t(15) and MCL 460.1028(8) both state that the Commission "shall authorize a financial incentive" for a utility that enters a PPA for renewable energy with a non-affiliate such that the proposed transaction qualifies.[607] Consumers argues that the statutes also clearly state that the incentive must be calculated based upon a multiple of the contract payments, not some subset of contract payments or other lesser amount.[608] Accordingly, Consumers states that the Commission lacks discretion to apply the FCM or to apply it only to a lesser portion of the contract payment.

In its brief, Staff argues that the Commission should reject application of an FCM or alternatively only allow the FCM to be applicable to a $79/MWh market-based PPA price. In doing so, Staff primarily repeats the testimony of Mr. Harlow. However, Staff additionally rejects Consumers witness Coker's claim that no "double-dipping" can occur, explaining that the issue is not rate-base recovery but the Company layering an FCM profit on top of a return it has already earned over decades. Staff argues that Mr. Coker misrepresents Mr. Harlow's testimony by implying Consumers has already been fully

[606] 3 Tr 247.
[607] Consumers brief, 70, 74.
[608] Consumers brief, 70 (citing MCL 460.6t(15) and MCL 460.1028(8)).

compensated on its investment when Mr. Harlow stated the Company has only been made whole to date.[609] Staff explains Consumers proposes to return sale proceeds to customers without refunding the historical returns that already made it whole over the past century of ownership.[610] Staff concludes that the FCM would amount to a second profit stream on assets the public has already funded, making the arrangement unreasonable.[611] Staff argues that although the statutes[612] governing FCMs do not explicitly forbid applying an FCM to a sale-and-PPA arrangement involving existing assets, they also do not implicitly authorize it because both statutes were written with new resources, not transferred legacy assets, in mind.[613] Finally, Staff argues that Consumers' claim about losing FCM eligibility for utility-scale PPAs is a misrepresentation because Staff's position does not threaten wind or solar PPAs. Rather, no Michigan utility has ever tried to sell a fully depreciated asset and then repurchase its output through a PPA, making the Company's comparison irrelevant.[614]

The Attorney General's brief implores the Commission not to approve an FCM for the PPA. She emphasizes that in Case No. U-20165, the Company itself stated that the purpose of an FCM is to incentivize the Company to implement competitive bidding to seek lower cost alternative for new renewable generation.[615] The Attorney General argues that the Company's proposal to apply an FCM in the instant case "flips the incentive provided by the FCM on its head by allowing the Company to profit while

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[609] Staff brief, 65.
[610] Staff brief, 65-66.
[611] Staff brief, 66.
[612] MCL460.6t(15) and MCL 460.1028(8)).
[613] Staff brief, 67.
[614] Staff brief, 68.
[615] Attorney General brief, 19.

continuing to receive energy from an existing source simply by selling the source and obtaining power through a PPA."[616] The Attorney General also states that if the Commission allows an FCM, it should apply it to a lower $73/MWh rate with a lower 7.31% return rate. In making these arguments, the Attorney General largely reiterates the testimony of Mr. Coppola.[617]

ABATE contends that Consumers failed to explain both how it arrived at the PPA price and how that price is reasonable; in doing so, ABATE primarily repeats the testimony of Mr. Andrews.[618] ABATE argues that Consumers' criticism of its PPA benchmarking is unfounded because ABATE did account for energy, capacity, and other market values, while Consumers admits its own $160/MWh PPA price assigns no specific value to any of those components.[619] Moreover, Consumers' claim that the Sale and PPA shift billions in future costs to a private owner is misleading because Consumers' own ratepayers will still pay those costs through the PPA's above-market price.[620] ABATE also objects to the proposed FCM arguing that it is "a perversion of the purpose of the incentive and would cause customers to pay a premium for the same power they were already purchasing from the same asset that was already producing it."[621] Per ABATE, the FCM here has no purpose and would merely increase customer rates.[622]

MHRC argues that the 13 dams are already fully depreciated after a century of operation, have a current net book value of negative $28.9 million, and Consumers

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[616] Attorney General brief, 19.
[617] Attorney General brief, 20-22.
[618] See ABATE brief, 15-18.
[619] ABATE brief, 17.
[620] ABATE brief, 17.
[621] ABATE brief, 18.
[622] ABATE brief, 18.

already earned a return on them. MHRC asserts that the FCM was created by the Legislature to incentivize construction of new renewable resource, not to allow utilities to transform old, depreciated negative value assets by selling them to a third party and earning a return on PPAs signed for those same assets.[623] MHRC acknowledges that the relevant statute states that the Commission "shall" authorize an FCM when approving a PPA, but asserts that the Commission need not do so where the statutory intent is clearly different such that it would lead to an absurd result.[624] If the Commission finds that it must apply an FCM to the PPA, then MHRC urges the Commission to consider it a reason to deny approval of the proposed transaction because it is inconsistent with public policy and interest under MCL 460.6q(7)(e).[625]

In its reply, the Company asserts that the FCM is plainly mandated by statute and no party has shown otherwise. Consumers states that if the Commission refused to approve an FCM, it would be violating MCL 460.1028(8) and effectively usurping legislative power by letting policy considerations overwrite the plain language of a statute.[626] Consumers argues that intervenors misunderstand the FCM by claiming it creates "double dipping," when in fact the incentive supports extending the life of renewable assets, not re-earning on past investments.[627] Consumers further contends that objections based on old policy statements are irrelevant because the current statute mandates approval of a properly calculated FCM, which the intervenors have not shown

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[623] MHRC brief, 37-38.
[624] MHRC brief, 39 (citing *Jennings v Southwood*, 446 Mich 125, 133 (1994); *see also Salas v Clements*, 399 Mich 103, 109 (1976)).
[625] MHRC brief, 39.
[626] Consumers reply, 42-43.
[627] Consumers reply, 44.

to be unlawful.[628] Consumers rejects MHRC's claim that the Legislature only intended to incentivize construction of new renewable resources because the plain language of the statute contains no such limitation, and MHRC is attempting to add language to the statute by suggesting that requirement.[629] Consumers also rejects MHRC's claim that the Commission need not award an FCM because it would be an absurd result; Consumers explains that the interpretive principle of avoiding absurd results only applies when there are ambiguities, and the statute is not ambiguous.[630]

The Company also rejects Staff and the Attorney General's suggestion to calculate the FCM based on a proxy market-based price rather than the PPA's actual price because MCL 460.1028(8) expressly states that the calculation of the FCM is based upon the contract payments made within a year.[631] The Company argues that the substitute market price calculation proposal ignores the statutory language and is impermissible.[632]

Finally, the Company repeats Mr. Coker's refutation of the Attorney General's proposal to calculate the FCM in such a way that it would result in a 7.31% incentive rather than 8.75% as calculated by the Company.[633]

In its reply, Staff agrees that the Company is statutorily allowed to earn an FCM on a PPA; however, Staff disputes that its market-based proxy price proposal is unlawful. Staff states that the statute requires the FCM to be calculated based upon the contract payments, but Staff adds that the contracts described in MCL 460.1028(8) are clearly

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[628] Consumers reply, 45.
[629] Consumers reply, 46.
[630] Consumers reply, 46.
[631] Consumers reply, 48.
[632] Consumers reply, 48-49.
[633] Consumers reply, 49-50.

defined as contracts for acquiring renewable energy and capacity or for purchasing renewable energy credits without the associated energy or capacity.[634] Staff argues that the statute says nothing about contracts including future investment in dams, spillways, embankments, or other avoided liabilities that are embedded in the price of the proposed PPA.[635] Staff further argues that the $1 sale price for each dam made it necessary to inflate the PPA price to above-market rates such that customers should not bear the burden of paying an incentive on the PPA that is higher than the market rate.[636]

In its reply, ABATE emphasizes that the $160/MWh PPA price is not explained in any of Consumers' testimony or briefing, was purely derived from negotiation, and apparently embeds a "hodgepodge of purported values" related to non-energy and non-capacity items with no allocation for any individual components of the price.[637] ABATE argues that Consumers' claim that the Sale and PPA will not have an adverse effect on customer rates is unsupported because the PPA price is inflated, not grounded in any calculation, and driven by private profit rather than customer benefit. Without transparency or a reasonable benchmark, and given that the PPA price exceeds market rates as well as the corrected costs of decommissioning, relicensing, and non-power alternatives, ABATE concludes that the PPA is unreasonable and should be rejected.[638] ABATE also quotes with approval the arguments of other intervenors opposing approval of an FCM for the PPA, and ABATE asserts that "[t]here is simply no justification for

[634] Staff reply, 7 (citing MCL 460.1028(5)).
[635] Staff reply, 7.
[636] Staff reply, 7.
[637] ABATE reply, 13.
[638] ABATE reply, 14.

increasing customer rates by permitting the Company to collect an incentive payment for transferring assets it already owns and buying back the power it already produces."[639]

c. Analysis

A threshold legal question raised by the recommendations of the intervenors is whether the Commission can approve a PPA while simultaneously declining to authorize an associated FCM. The law is clear on this point: it cannot. The relevant statute states that if a regulated electric provider enters a PPA for renewable energy resources with a non-affiliated third party, then "the commission *shall authorize* an annual financial incentive for the electric provider." MCL 460.1028(8) (emphasis added). The use of the word "shall" in a statute generally indicates a mandatory directive.[640] The statutory language here plainly does not provide discretion to withhold a FCM if a qualifying PPA is approved.

The parties also dispute what contract price should be used to calculate the FCM if one is authorized. The relevant statute again provides a straightforward answer: it states in pertinent part that the FCM "shall be calculated as the product of contract payments in that year . . . ." MCL 460.1028(8). Thus, if the PPA is approved and the FCM is therefore authorized, then the incentive calculation should be based upon the actual contract payments regardless of what underlying costs may be embedded into the contract payment or whether the payment is fixed or variable.[641] To the extent that an intervenor

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[639] ABATE reply, 15-16.

[640] *In re Forfeiture of Bail Bond*, 496 Mich 320, 329; 852 NW2d 74 (2104) (concluding that the Legislature, in changing a statute's language from "may" to "shall," intended to create a mandatory directive); *Browder v Int'l Fidelity Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1982) ("Thus, the presumption is that "shall" is mandatory").

[641] Notably, Staff opined that MCL 460.1028(5)(b) and (c) supported Staff's position that PPAs are not intended to include the value of the transfer of liabilities because those sections only reference contracts

believes that the contract price inappropriately embeds excessive payment for items beyond energy and capacity, that concern goes to whether the PPA itself should be approved, not to the manner in which the FCM is calculated under the statute. In other words, the statute implicitly assigns such concerns to the approval stage, not the incentive calculation stage, which is clearly described by MCL 460.1028(8).

On a related note, whether the Commission can condition PPA approval upon restricting a FCM to fixed energy payments appears to be a disputed legal issue now on appeal in another Consumers PPA matter.[642] Unfortunately, the Court of Appeals is unlikely to resolve that matter in time for its decision to provide guidance in this case.

The Attorney General disputed the appropriate calculation for the pre-tax weighted average cost of capital for use with the FCM if one is approved; however, for the reasons stated by Mr. Coker in his rebuttal, this PFD generally accepts the Company's methodology which has not been disputed by other parties in this case and has been relied upon previously.

Given the conclusions above regarding the mandatory nature of the FCM and its calculation methods, this PFD views the intervenors' remaining arguments as objections to approving the PPA itself.

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for acquiring renewable energy, capacity, or RECs without mention of including transfer of liabilities or other matters. While this is true, Staff does not refute the Company's argument that utility-scale PPAs can necessarily include some level of compensation for non-energy or non-capacity items, and there is no indication from the text of MCL 460.1028(8) that the Commission is required or empowered to disaggregate the contract price into discrete categories for the purpose of calculating the FCM. Instead, MCL 460.1028(8) clearly requires the FCM to be calculated based upon the contract payments, which presumably could include embedded compensation attributable to items other than energy, capacity, and RECs.

[642] See February 19, 2026, Order in Case No. U-21090, p. 5 (approving a PPA but requiring that the FCM be applied only to the fixed energy payment while rejecting Consumers' proposal to apply the FCM to both the fixed energy payment and storage-charging costs); see also Consumers Energy's February 27, 2026, Claim of Appeal filed in that same docket. The Company's appeal remains pending in the Michigan Court of Appeals and has been assigned COA Docket No. 379673.

First, this PFD shares the concerns raised by Staff and other intervenors that the PPA and FCM can risk "double dipping" on utility assets, although this is somewhat mitigated by the Company's plan to credit the full gain on the sale (if any) back to customers.[643] However, this PFD is concerned that this measure does not fully alleviate the more fundamental concern that the Company has already earned a return of and on its investment in the dams over the past century. This specific PPA with an FCM will therefore allow the Company to handsomely profit from divesting its own assets and buying back power from those same assets at a premium, above-market price. This PFD also agrees with Staff and intervenors that approving such an arrangement could establish a troubling precedent in which ratepayers may never receive the rate relief associated with fully amortized assets and may instead pay an FCM on assets that they have effectively already funded.

Second, the PPA and FCM raise other significant concerns. As the intervenors rightly point out, the minimum PPA starting price of $160/MWh is far beyond any reasonable market value of energy and capacity, escalates annually, and embeds payment for future costs and liabilities related to the dams. Consumers contends that rejecting a PPA for including such costs and liabilities could undermine utility-scale PPAs generally, which necessarily bundle long-term capital, environmental, and maintenance costs.[644] However, the proposed PPA in this instance is not similar to standard utility-scale renewable PPAs for several reasons discussed both below and more generally by the intervening parties.

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[643] See 3 Tr 242.
[644] 3 Tr 243.

Third, the proposed PPA is not intended to support the development of new renewable generation; instead, it is intended to financially prop up preexisting dams that the Company is divesting because of their unfavorable economic profile. While an FCM is required for a renewable energy PPA as described above, it seems highly unlikely that the Legislature intended for this provision to be used to allow a utility to sell its own fully depreciated generation assets and profit from buying back energy from those assets at a premium, above-market price.

Fourth, the dams already face significant economic challenges, which is why the Commission previously encouraged the Company to evaluate all options for their future, including potential divestment, to avoid burdening ratepayers with unreasonable costs. However, approving a 30-year, above-market PPA would place the financial burden of sustaining these uneconomic assets onto ratepayers while conferring financial benefits on Consumers (through the FCM) and on Confluence (through expected profits).

In effect, like economic alchemy, the proposed PPA and FCM transmute these struggling dams into a golden opportunity for Consumers to earn a profit on the PPA while offloading future liabilities related to the dams. Consumers' assertion that the PPA benefits ratepayers by transferring dam-related liabilities to a private owner is dubious because ratepayers will still bear those same costs through the PPA's above-market price. In essence, the PPA simply pays a private equity firm to relicense and operate the dams, ostensibly more cheaply than Consumers could do so itself, a proposition that is not without significant risk as is discussed elsewhere in this PFD. More specifically, there are safety concerns about the ability to maintain the dams, see generally Section C of this

PFD, *infra*, and concerns that future decommissioning liabilities could still ultimately fall onto taxpayers, see Section (D)(3), *infra*.

In summary, the Commission must authorize an FCM if it approves the PPA, and this PFD concludes that the statute requires that the incentive be calculated using the actual contract payments resulting in a total payout for Consumers Energy of at least $270 million over the course of the 30-year PPA.[645] But regardless of how the FCM is calculated, this PFD concludes that the proposed PPA and FCM would set a troubling precedent for utility recovery on assets already paid for by ratepayers, embeds an above-market price that includes future liabilities, props up uneconomic existing dams rather than new renewable generation, and rewards Consumers for shedding its own future obligations while placing substantial financial risk onto ratepayers and taxpayers. For these reasons, and the reasons more broadly discussed by the intervenors, this PFD concludes that it would not be reasonable and prudent to approve the proposed PPA.

4. Disputed Regulatory Accounting Requests

a. Testimony

Mr. Coker testified that the Company proposed deferring any gain from the transaction in a regulatory account for refund to customers. If the transaction resulted in a net loss, then he similarly proposed to defer the loss to a regulatory account for later recovery in the Company's next general rate case.[646]

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[645] The $270 million figure assumes a starting PPA price of $160/MWh, but as discussed elsewhere in this PFD, the starting price is subject to cost escalators and could be as high as $165/MWh, which would increase the total compensation under the FCM.

[646] 3 Tr 228.

b. Briefing

Staff opposes the request to defer any net loss from the transaction into a regulatory account. Staff explains that Consumers set the $1-per-facility sale price itself in the RFP, never conducted or solicited any market-value analysis, and restricted bidding in ways that prevented market forces from determining the market value.[647] Staff argues that Consumers could have used alternative RFP structures such as allowing varied purchase prices, seeking bids without a PPA, or setting a higher fixed price to avoid losses; however, it instead chose an approach that guaranteed identical $1 offers.[648] Because Consumers now seeks to defer any resulting net loss into a regulatory asset, Staff notes that the potential loss would stem entirely from Consumers' own decision to impose a fixed sale price rather than let the market operate. Staff therefore recommends denying the Company's request to defer any net loss associated with the transaction.[649]

The Company's reply briefing did not address this issue.

c. Analysis

For the reasons stated by Staff, this PFD agrees that if the Commission approves the sale, then the Company should not be permitted to defer a net loss in a regulatory account for later recovery. As Staff has articulated, the Company itself created conditions that made a loss on the sale a likely outcome, and it is therefore inappropriate for the Company to seek regulatory accounting treatment to recover that loss from ratepayers.

[647] Staff brief, 70.
[648] Staff brief, 70, 71.
[649] Staff brief, 71.

5. Conclusion Regarding Effect on Customer Rates Under MCL 460.6q(7)(a)

This PFD concludes that the proposed sale and PPA's effect on rates, when compared to the alternative options, is inconclusive given the evidence in the record.

While the Company contended that the sale and PPA was clearly the lowest cost option, for the reasons stated in Section B(1)(e)(*ii*) of this PFD, *supra*, that clarity simply does not emerge from this PFD's analysis of the evidence presented. In sum, the record does not support Consumers' claim that the sale and PPA represent the lowest-cost option as overstated Company estimates, better variance analyses, overlapping estimated cost ranges, unexplored alternatives, and other factors enumerated in the sections above collectively undermine the assertion that the proposed transaction yields a clear rate benefit.

Further, this PFD concludes that the proposed PPA, which affects customer rates, is highly problematic and should be rejected for the reasons stated in Section B(3)(c) of this PFD, *supra*.

C. Effect on Safe, Reliable, and Adequate Service under MCL 460.6q(7)(b)

There is generally no dispute that the proposed transaction does not jeopardize the provision of reliable or adequate energy service.[650] However, the parties dispute whether the proposed transaction will affect the provision of safe service, and their safety-related concerns about the proposed transaction center on Confluence's ownership of the dams as a private entity, its history and reputation, its technical and financial capabilities, and the regulatory framework governing hydroelectric dam safety.

[650] This PFD agrees that reliable and adequate service are not at issue for the reasons stated by the Company. See Consumers brief, 57.

These closely related topics, and the issues they entail, are discussed below. Additionally, while this PFD considers these concerns primarily under MCL 460.6q(7)(b), some parties consider them under MCL 460.6q(7)(e) because they question whether the transaction resulting in Confluence's ownership of the dams would be contrary to public policy or to public interest.

1. Concerns Regarding Confluence

a. Testimony

Mr. Blumenstock testified that Hull Street Energy (HSE) is a private equity firm with significant experience owning, operating, and investing capital in river hydro assets; further, he stated that they have "a long track record of owning and operating hydroelectric facilities across North America, including acquisition and improvement of 47 hydro assets within the past decade."[651] He stated that HSE's subsidiary, Confluence, will assume the license requirements for the facilities imposed by FERC and that the PPA price was designed to ensure that Confluence "will be incented to safely and reliably operate the Facilities so that it can receive revenue, through the PPA price, for the entire term of the PPA."[652] Significantly, Mr. Blumenstock asserted that Confluence has access to equity to fund capital improvements and maintenance though HSE, [redacted][653]

Mr. DeCooman testified that while the Company identified HSE's track record of buying and reselling assets, it did not negotiate any terms or commitments in the PSA or

[651] 3 Tr 40.
[652] 3 Tr 47.
[653] Conf 3 Tr 940; see also Exhibit X, attached to Conf Exhibit A-1.

PPA that prevent Confluence from selling the dams to a third party.[654] He explained that while the Company referenced HSE's track record of owning and operating 47 dams, HSE currently owns a single dam, the Boott Hydro facility in Massachusetts, and it divested all 46 other dams with an average length of ownership of less than five years.[655] Per Mr. DeCooman, HSE intended to divest the Boott dam as well, but the potential purchaser ultimately declined to acquire that facility.[656] Mr. DeCooman testified that the Company and Confluence have pointed to the 30-year term of the PPA as an incentive for Confluence to own, operate, and relicense the dams.[657] He added that affiliates controlled by HSE successfully completed FERC license renewals for three dams, submitted relicensing applications for seven more, and provided evidence of several completed upgrades to various dams that they previously owned.[658] Mr. DeCooman testified that when asked for information on its eventual decommissioning plans for the 13 dams, Confluence responded that it had no such plans because with proper maintenance the dams have "perpetual viability."[659]

Mr. DeCooman testified that Staff views Confluence as a capable potential owner of the Consumers' hydro fleet given its track record and the fact that Consumers will transfer related employees to Confluence as part of the PSA.[660] He testified that while Confluence may be a capable owner, there are still concerns about the long-term future

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[654] 3 Tr 844.
[655] 3 Tr 847-848.
[656] 3 Tr 848 (citing Exhibit S-1.24).
[657] 3 Tr 845.
[658] 3 Tr 848.
[659] 3 Tr 846-847 (citing Exhibit S-1.24).
[660] 3 Tr 849.

of the dams and their potential to become stranded assets with significant liabilities that could ultimately become the responsibility of the state.[661]

Mr. DeCooman testified that Confluence stated an intention to pursue relicensing for all 13 dams and even stated an intention to seek a second license renewal after the expiration of a hypothetical first extension.[662] Per Mr. DeCooman, Confluence acknowledged that the WSP Roadmap (Exhibit A-8) showed decommissioning would generally cost less than relicensing, but Confluence believed that it negotiated the PPA price such that it would have adequate long-term revenues.[663] [redacted][664] [redacted][665]

Mr. Heidemann testified that Staff employed modeling to determine if Confluence will turn a profit using the same model in WSP's break-even analysis (referencing Exhibit A-8, p. 40-44); further, he explained the various required assumptions and the four cases used in this analysis, which revolve around capital expenditure inflation and the amount of repairs already completed by Consumers.[666] He testified that all but one modeling case

[661] 3 Tr 849.
[662] 3 Tr 845 (citing Exhibit S-1.24).
[663] 3 Tr 845.
[664] Conf 3 Tr 1253 (citing Conf Exhibit S-1.25).
[665] Conf 3 Tr 1254 (citing Conf Exhibit S-1.25. p. 3).
[666] 3 Tr 901-902.

showed Confluence turning a profit.[667] However, he added that even in profitable scenarios, the revenue was insufficient to safely maintain and relicense the dams such that Confluence "will need to inject additional funds in order to renew the FERC license of the dams."[668] [redacted] [669] He testified, "[t]he imputed cost that Confluence would have to theoretically borrow under the four cases ranges from [redacted]"[670] Mr. Heidemann contended that if the sum Confluence needed to borrow to relicense the dams exceeded the NPV value of the PPA contract, then it might simply decline to make the repairs and surrender the licenses.[671]

[redacted] [672] Mr. Heidemann testified Staff does not know the exact amount Consumers spent on major rehabilitation projects from 2023–2025, but the total capital spending at each hydro site is available. Using that information, he adjusted the prior NPV modeling by adding assumed maintenance costs back into the model and crediting the Company's actual spending. He explained that this calculation relied on assumptions that the WSP capital estimates are accurate and that any extra spending reflects accelerated projects

[667] 3 Tr 903 (citing Exhibit S-4.9).
[668] 3 Tr 903.
[669] Conf 3 Tr 1308.
[670] Conf 3 Tr 1308 (citing Conf Exhibit S-4.11).
[671] 3 Tr 904 (citing Conf Exhibit S-4.11).
[672] Conf 3 Tr 1309.

rather than cost overruns.[673] [redacted]

[redacted]

[redacted]

[redacted][674] But he contended that Confluence "will likely have enough revenue over the life of the contract to cover these imputed costs."[675] He concluded that the contract provides enough revenue for Confluence to maintain the dams and, if needed, to borrow funds for critical repairs or upgrades required for FERC relicensing.[676]

Mr. Coppola testified that HSE has limited experience operating hydro power plants having owned several previous facilities for less than five years before divesting them; he added that most of the employees of HSE are executives and administrative staff with no direct experience operating hydroelectric plants.[677] He testified that Confluence is a newly formed shell company with no assets or staff beyond planned transfers from Consumers, and he warned that its limited operating experience is concerning given the major capital and relicensing challenges ahead. He also stated that Confluence will assume major financial and environmental obligations under the PSA, PPA, and EIA, and its operating cashflows are unlikely to be sufficient to satisfy potential liabilities that may occur in the future.[678]

[redacted]

[redacted]

[673] 3 Tr 905-906.
[674] Conf 3 Tr 1310.
[675] 3 Tr 906.
[676] 3 Tr 906.
[677] 3 Tr 310.
[678] 3 Tr 310.

[redacted][679]

[redacted][680]

[redacted][681]

[redacted][682]

[redacted][683]

Mr. Coppola opined that [redacted] is insufficient and there must be a more open-ended commitment to fund Confluence's needs over the long term.[684]

Mr. Trumble testified that he had two main concerns with the potential sale to Confluence. The first was that Consumers can invest in dam safety and recover all costs through rates or rate increases; however, Confluence's revenue will come only from the

[679] Conf 3 Tr 1080 (citing Conf Exhibit AG-12).
[680] Conf 3 Tr 1080-1081.
[681] Conf 3 Tr 1081.
[682] Conf 3 Tr 1081.
[683] Conf 3 Tr 1081.
[684] Conf 3 Tr 1082.

PPA and will not be able to increase revenue to offset any higher-than-expected costs.[685] His second concern was that the 30-year PPA includes rates that are much higher than other PPAs for hydropower, and after the PPA expires it is unclear whether future market revenues or PPA agreements would be sufficient to safely maintain the dams.[686]

Ms. Mistak testified that there was uncertainty surrounding Confluence's ability to operate and maintain the dams because Confluence is a new hydropower owner and there is no guarantee that knowledgeable employees transferred from Consumers as part of the sale will stay in the long term.[687] She further raised concerns that Confluence has no history of relicensing dams, and while HSE has such a history, its affiliated entities have generally not seen the process through from start to finish.[688] Ms. Mistak also expressed concerns that Confluence does not have the same depth of experience in managing high hazard dams because, while the portfolio of dams owned by HSE affiliates included some high hazard dams, most were only owned for 3-4 years before being sold.[689] She further specified that a review of public filings to FERC's docket for projects owned by HSE "demonstrates delays, requests for extensions, and a lack of long-term project management."[690]

Dr. Lyon testified regarding the financial risks to Michigan taxpayers and ratepayers that could result if the Commission approves the proposed sale to an "out-of-state non-regulated entity like Confluence Hydro."[691] He opined that Confluence would

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[685] 3 Tr 443.
[686] 3 Tr 444.
[687] 3 Tr 406.
[688] 3 Tr 407-408.
[689] 3 Tr 408.
[690] 3 Tr 414.
[691] 3 Tr 676-677.

effectively be judgment proof, i.e. its liabilities from an accident or dam failure would likely far exceed its assets. He stated that this judgment-proof ownership situation would be even more acute if Confluence completes plans to place each individual dam in its own separate limited liability company (LLC), which would result in still fewer assets per entity. Per Dr. Lyon, this would shift risk to ordinary citizens and leave Confluence with little or no incentive to maintain the dams, in contrast to Consumers, which has substantial reputational, regulatory, and monetary incentives favoring maintenance.[692] In support, he cited U.S. Army Corps of Engineers data showing that all 40 utility-owned dams in Michigan are in fair or better condition, while 32 of 396 privately owned dams are in poor or unsatisfactory condition.[693] Furthermore, the 13 dams in the Company's fleet average twice the age for which dams are generally designed to last, and Confluence has "not conducted any analysis of the scope or magnitude of potential damages from a dam failure."[694]

Dr. Lyon also testified that Confluence has not explained the distribution of revenue from the dams to its investors if each dam is placed in its own LLC, and it has not guaranteed, or even thoroughly explained, its anticipated investments or maintenance programs for the dams.[695] [redacted][696]

[692] 3 Tr 677, 680-687, 691.
[693] 3 Tr 685.
[694] 3 Tr 683.
[695] 3 Tr 687-691.
[696] Conf 3 Tr 1197 (quoting Exhibit X to Confidential Exhibit A-1 (The PSA)).

[redacted][697][redacted][698][redacted][699]

Dr. Lyon testified that Confluence's parent company HSE has a history of acquiring dams only to sell them to third parties, with HSE having divested all but one of 47 dams acquired since 2017. He opined that this suggested that HSE is likely to do the same with the Consumers dam fleet.[700] Although Confluence asserts that the 30-year PPA provides it with an incentive to operate the dams, Confluence does not admit an obligation or commitment to operate the dams for the full 30 years.[701] Dr. Lyon referred to Mr. Jester's testimony regarding the lack of profitability for Confluence to make the necessary investments to safely operate the dams to support his assumption that Confluence is likely

[697] Conf 3 Tr 1197.
[698] Conf 3 Tr 1198.
[699] Conf 3 Tr 1199-1200.
[700] 3 Tr 689-691.
[701] 3 Tr 689.

to divest the dams to a third party.[702] A third party would have no obligation or incentive to make the necessary safety investments in the dams.[703]

To illustrate how the lack of investment incentive transfers operational safety and disaster risk onto taxpayers, Dr. Lyon described the catastrophic failures of the Edenville and Sanford Dams, and the evolving situation with the Au Train Dam.[704] In 2020, the nearly 100-year-old Edenville Dam failed after heavy rain, causing the Sanford Dam downstream to overflow. This together resulted in approximately $200 million in flood damage, as well as the evacuation of over 10,000 residents near Midland, Michigan. The failures could have been prevented if the owner, Boyce Hydro, made improvements to the Edenville Dam's spillway. Instead, Boyce Hydro and its owner, Lee Mueller, disregarded imminent threats to safety and dam integrity.[705]

Dr. Lyon stated that Boyce Hydro declared bankruptcy despite a $120 million judgment obtained by the State of Michigan rendering the judgment uncollectible because both Mueller and Boyce Hydro were judgment proof. This resulted in Michigan taxpayers paying for the damage caused by the dam failures.[706] And, according to Dr. Lyon, Edenville is not an isolated occurrence: a similar situation is emerging at a private dam owned by U.P. Hydro, LLC, in Au Train Township, Michigan. There, the private owner declared bankruptcy,[707] failed to invest in the dam, and the dam is now facing $4 million in repairs or the risk of failure.[708] Dr. Lyon concluded that the Company's "proposed sale

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[702] 3 Tr 690.
[703] 3 Tr 689-690.
[704] 3 Tr 677-680.
[705] 3 Tr 678-679.
[706] 3 Tr 678-679.
[707] E.D. Wisc. Bankr. Case No. 23-21128.
[708] 3 Tr 679-681.

of its 13 aging hydro dams to Confluence Hydro LLC sets up yet another situation with eerie parallels" to the Edenville Dam failure, and the situation in Au Train, which would leave Michiganders bearing the costs of a future dam failure.[709]

Mr. Wedoff similarly testified that the dams might not generate sufficient electricity at market prices to offset the substantial costs of maintenance, and that decommissioning would also impose a substantial cost, while the dams' owner has an economic incentive to minimize costs.[710] This minimization of maintenance expenditures can lead to future dam failure and incident losses of property and property value, against which Consumers' ownership insulates the public. He explained that Consumers has a strong incentive to avoid shareholder losses that would occur from adverse events at the dams.[711] In support of this assumption, Mr. Wedoff cited the Pacific Gas and Electric Corporation (PG&E) shareholder loss of dividends for three years, and the company encumbering over $7 billion in assets to secure payment of new debt, incident to PG&E's bankruptcy.[712]

Mr. Wedoff remarked on the possibility of a negative value transfer to consummate the sale of the dams from Consumers to Confluence.[713] He then outlined the elements of avoiding a fraudulent transfer under MCL 566.35(1), and in a federal bankruptcy proceeding under 11 USC § 548(a)(1)(B), detailing the examples *In re McCook Metals, LLC,* 319 BR 570 (Bankr ND Ill 2005) and *Tronox Inc v Anadarko Petroleum Corp (In re Tronox Inc)*, 503 BR 239 (Bankr SDNY 2013).[714] From this, he opined that the Company's

[709] 3 Tr 680.
[710] 3 Tr 492-493.
[711] 3 Tr 492-493.
[712] 3 Tr 493.
[713] 3 Tr 493-494.
[714] 3 Tr 494-496.

sale of the dams might be a fraudulent transfer if the maintenance of, repairs to, and potential damage to, surrounding property from owning the dams exceeds the value of the transfer. He noted that, while Confluence has not disclosed any estimates of damage in the event of dam failure, the creditor claims in the Edenville Dam bankruptcy exceeded $250 million, not including class action lawsuits filed against EGLE.[715]

Mr. Wedoff reasoned that a dam failure and its likely resulting bankruptcy could result in a fraudulent transfer action to return dam ownership and liability to Consumers. If that occurred, Consumers would seek to increase rates to cover the liability. If it did not occur, or the action was unsuccessful, property owners would either seek recovery from the State, or they would bear any losses from a dam failure themselves. From this, Mr. Wedoff concluded that the sale of the dams should not be approved because Consumers had "not established" that the dams would be properly maintained or decommissioned after sale, such that the Company's retention of the dams would be the "best protection against dam failure."[716]

Mr. Jester examined Confluence's business case for purchasing the dams explaining that, as an entity owned by a private equity firm, Confluence will act as a profit maximizing entity and that "[i]t is therefore imperative that the Commission understand Confluence Hydro's business case in a way that may forecast their future behavior."[717] As a starting point, he assumed that Confluence's costs would be the same as those born by Consumers in Exhibit A-6 except that Confluence's revenue would come from the PPA and later from the sale of power at market prices (using the Company's assumed

[715] 3 Tr 496-497.
[716] 3 Tr 496-498.
[717] 3 Tr 614.

replacement power cost) after the conclusion of the 30-year PPA.[718] Using this modeling, he explained that if Confluence relied on the Company's projections, then acquiring and continuing to own the dams for 50 years would result in a $710 million NPV loss such that it is not a rational business decision for Confluence to enter the transaction.[719] Mr. Jester also assessed the business case to continue operations only through the end of the 30-year PPA, and he discovered that it showed most dams had intermittently positive or negative margins with several having persistent annual losses.[720] He asserted that "[b]ased on Consumers Energy's cost projections, 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."[721]

[redacted][722]

[redacted][723]

Mr. Jester cast doubt on the Company's position that the high PPA price would adequately incentivize Confluence to continue to own the dams throughout its 30-year term. [redacted]

[718] 3 Tr 614-615. Mr. Jester also explained that he made another adjustment by excluding the effect of the FCM which would not be available to Confluence.
[719] 3 Tr 616.
[720] 3 Tr 620-621.
[721] 3 Tr 621.
[722] Conf 3 Tr 1165.
[723] Conf 3 Tr 1164 (citing Exhibits MHRC-55 and MHRC-56).

[redacted][724] Mr. Jester opined that Confluence's publicly stated intent to hold the dams for a long term were not reliable if it would experience a financial loss as a result; further, he added that Confluence's parent HSE has a history of purchasing and reselling dams after only a few years.[725] [redacted][726]

Mr. Jester testified that Confluence has no contractual obligation to continue operating the dams, cannot be prevented from selling them, and will no longer be subject to MPSC oversight after the sale.[727] He also explained that placing each facility in its own LLC limits liability, enables cash to be moved out of each entity, and could allow individual LLCs to declare bankruptcy to avoid decommissioning costs.[728] Mr. Jester noted that Confluence contended that it has not analyzed financial projections on a per-dam basis and instead focused on the portfolio as a whole; however, he stated that he would be "surprised" if Confluence ignored facility-specific financial results because a common business practice would be to examine each facility and divest those that produce financial losses.[729] Mr. Jester concluded that Confluence's lower projected capital costs show that the Company's relicensing cost estimates are unreasonably high, and that

[724] Conf 3 Tr 1159-1160 (citing Exhibit MHRC-44).
[725] 3 Tr 618.
[726] Conf 3 Tr 1161 (citing Exhibit MHRC-46).
[727] 3 Tr 619-620.
[728] 3 Tr 621.
[729] 3 Tr 623.

under more rational cost assumptions, the Company's case for selling the facilities fails.[730] He also stated that Confluence has not shown a viable long-term plan to operate the dams safely or fund decommissioning, so the proposed transaction does not ensure continued operation or orderly future decommissioning.[731]

This PFD also notes that, while placed in the section of this PFD addressing environmental concerns, the testimony of MHRC witnesses Nelkie, Greenberg, Sendek, Buhr, Pitser, Garlock, and Feenstra also touched upon generalized concerns about selling the dams to Confluence.

In his rebuttal for the Company, Mr. Blumenstock disputed Mr. DeCooman's contention that Consumers has no oversight or approval if Confluence wished to sell the dams to a third party. He specified that the assignment and change in control provision of the PPA (Section 16) and the assignment provision in the EIA (section 9) required prior written consent from Consumers Energy.[732]

Mr. Blumenstock agreed with Mr. Heidemann's conclusion that Confluence would have large negative cashflows in early years, but that it would likely have enough revenue over the course of the PPA to cover costs. He added that: (1) Confluence's own cashflow projections were based on conservative production estimates, and additional production would result in additional revenue; (2) Confluence could expedite or delay projects to lessen the magnitude of negative cashflow by adjusting the timing of spending; and (3)

[730] 3 Tr 624.
[731] 3 Tr 624.
[732] 3 Tr 82.

Confluence can access debt from lending institutions or government institutions to cover periods of negative cashflow.[733]

[redacted][734][redacted][735] Mr. Blumenstock rejected Mr. Coppola's claim that Confluence had limited experience in river hydro operations citing Confluence's discovery responses.[736]

Mr. Blumenstock asserted that Mr. Trumble's concern about Confluence's ability to safely operate the dams with only revenue from the PPA was "unfounded and does not represent the evidence presented by Confluence Hydro in its discovery responses[.]"[737] Citing several exhibits, he asserted that Confluence has stated that the PPA revenue is sufficient to safely operate and relicense the dams while earning a profit.[738]

Mr. Blumenstock contended that Mr. Wedoff's testimony mischaracterized his discovery response, explaining that he did not say transferred liabilities exceed asset value, only that a higher purchase price would have led Confluence to negotiate a higher

[733] 3 Tr 91-92.
[734] Conf 3 Tr 1025.
[735] Conf 3 Tr 1025.
[736] 3 Tr 133 (citing Exhibit A-29).
[737] 3 Tr 103.
[738] 3 Tr 103 (citing Exhibits A-26 and Conf Exhibit A-27).

PPA price to keep the transaction financially neutral.[739] Mr. Blumenstock also distinguished the proposed sale and PPA from the facts of the two fraudulent transfer bankruptcy cases referenced by Mr. Wedoff.[740] Mr. Blumenstock explained that a fraudulent-transfer claim is not a realistic concern because there is no imminent risk of dam failure, failure costs are not current liabilities, the transaction is designed and funded to prevent failures, and it is especially unlikely that a failure would occur within the short two-year window for bringing such a claim.[741] He reject Mr. Wedoff's skepticism of Confluence's ability to be responsible owners by pointing to the Company's due diligence in selecting them as the purchaser and by referencing exhibits demonstrating their safety record.[742]

Mr. Blumenstock responded to Dr. Lyon's concerns about Confluence's corporate structure utilizing LLCs by stating that LLCs are commonly used in setting up subsidiaries in transactions. He opined that business structures that offer limited liability enable investors to gather capital and take on projects that would otherwise be too risky; further, he stated virtually every major business uses business structures that limit liability.[743] He added that Confluence has responded to the parties' discovery questions with candid and straightforward statements about their plans for the dams such that concerns that Confluence wished to become "judgment-proof" are unfounded.[744]

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[739] 3 Tr 105.
[740] 3 Tr 105-107.
[741] 3 Tr 108.
[742] 3 Tr 109 (citing Exhibits A-26, A-28, A-31, A-40 and Confidential Exhibit A-32).
[743] 3 Tr 110.
[744] 3 Tr 110.

Mr. Blumenstock rejected Dr. Lyon's claim that the proposed transaction bore any similarity to the case of the Edenville dam failure. He explained that Boyce Hydro, LLC, the owner of the Edenville dam, was in turn owned by a single absentee proprietor, Lee Mueller, whose primary source of capital was a family trust. By contrast, Confluence is owned by a private equity firm with significant financial backing and is comprised of specialized staff and industry professionals.[745] He opined that the only similarity was that both Boyce Hydro and Confluence are set up as separate LLCs from their parent companies, but that this was simply a common corporate structure.[746] He added that the vast majority of dams in the U.S. are owned by private, non-utility companies compared to roughly 2% that are owned by public utilities such that that the Edenville case "is not representative of what the Commission should expect from all dams in private, non-utility ownership[.]"[747] Mr. Blumenstock stated that Mr. Lyon's claim that the transaction would shift risk to taxpayers and ratepayers is unfounded because there is no evidence that Confluence will underinvest or be judgment-proof. Citing Exhibit A-42, he contended that past cases like Edenville show that despite complex LLC structures, even Lee Mueller and Boyce Hydro "have not turned out to be 'judgment-proof.'"[748]

Mr. Blumenstock also rejected Mr. Jester's NPV analysis undertaken from the perspective of Confluence. He criticized the analysis because it was based upon the Company's capital and O&M cost assumptions rather than those of Confluence.[749] He stated that the Company's cost structure and long-term risk tolerance are different from

[745] 3 Tr 110-111.
[746] 3 Tr 111.
[747] 3 Tr 111.
[748] 3 Tr 111 (citing Exhibit A-42).
[749] 3 Tr 118.

that of Confluence.[750] He opined that Confluence may see value beyond the 30-year PPA, has industry optimized practices, and may have opportunities to purchase other river hydro facilities such that it is possible that their costs will be lower than the Company's.[751] Mr. Blumenstock also disagreed with Mr. Jester's conclusion that Confluence would struggle to remain profitable under the PPA because Confluence itself negotiated the PPA price and provided a confidential pro forma business outlook to support its business case.[752] He also rejected Mr. Jester's claim that Confluence may not maintain the dams by suggesting that it was conjecture and was refuted by Confluence's own statements and record as a safe owner and operator of FERC-regulated hydroelectric dams.[753] Mr. Blumenstock expressed that he did not believe that Confluence's long-term ownership intentions are a legitimate concern because the 30-year PPA makes this deal different from past instances wherein Confluence or HSE bought and swiftly resold dams.[754]

In his rebuttal for the Company, Mr. Monroe disagreed with Mr. Jester's contentions that Confluence would likely sell the dams shortly after purchasing them. He stated that "as stated by Confluence Hydro in public meetings, Confluence Hydro intends to relicense the 13 river hydros in order to support the 30-year Power Purchase Agreement."[755] He explained that HSE's past and current hydro ownership includes the dams listed in Exhibits A-44 and A-45, along with several additional development, non-FERC, and multi-facility FERC-licensed projects.[756] Mr. Monroe admitted that

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[750] 3 Tr 118.
[751] 3 Tr 118.
[752] 3 Tr 118, 120 (citing Exhibit A-26).
[753] 3 Tr 118-119.
[754] 3 Tr 119.
[755] 3 Tr 182.12.
[756] 3 Tr 182.12-182.13.

Consumers initially had concerns that HSE would possibly flip the dams after reviewing their history, but he asserted that "[a]fter further due diligence and discussions with Confluence Hydro, Consumers Energy is confident in Hull Street Energy's intent to relicense the 13 river hydro dams."[757] Citing multiple exhibits, he reiterated that Confluence has stated its intention to relicense all 13 dams.[758] In addition, he opined that the 30-year term of the PPA provides long-term support for continued ownership and investment in the facilities through its duration.[759]

Mr. Monroe also rejected DNR witness Mistak's concerns that experienced employees might not stay with Confluence asserting that all of Consumers Energy's salaried hydro staff, and a major portion of its unionized hydro staff, will transfer to ensure safe operations after the sale.[760] Further, he detailed the meaningful incentives Confluence is taking to induce employees to stay with Confluence [redacted][761] Additionally, he disputed Ms. Mistak's claim that FERC's docket showed delays, requests for extensions, and lack of adequate management for hydro projects owned by HSE. He asserted that "FERC's process provides flexibility for licensees to reprioritize work so that the most important projects are addressed at the appropriate time."[762] Therefore, he contended that requests for extensions did not indicate a lack of proper management.[763]

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[757] 3 Tr 182.13.
[758] 3 Tr 182.13-182.14 (citing Confidential Exhibit A-46, and Exhibits A-47 through A-51).
[759] 3 Tr 182.14.
[760] 3 Tr 182.14-182.15.
[761] Conf 3 Tr 1043 (citing in part Confidential Exhibit A-53 relating to employee retainment incentives).
[762] 3 Tr 182.20.
[763] 3 Tr 182.20.

In his rebuttal for MHRC, Dr. Lyon raised concerns about Mr. Heidemann's calculations showing that Confluence would generate sufficient revenues from the PPA. Dr. Lyon opined that Confluence's return on equity (ROE) can affect those calculations. He explained that Confluence is owned by a private equity fund, Hull Street Energy Partners III, LP (HSE III), and that private equity funds seek investments with higher risk and higher ROE than utilities.[764] He testified that from 1990-2010, private equity returns averaged 16.5% while publicly traded stocks averaged 9.2%, and the higher rate of return for private equity companies means less money will be available for other purposes including hydropower maintenance and upgrade costs.[765] He opined that Mr. Heidemann's analysis does not take into account the higher ROE demanded by private equity investors, and it therefore likely overstates the amount of funding available to Confluence.[766] Dr. Lyon also explained that Confluence refused to answer discovery questions regarding its promised or planned ROE, which creates a lack of transparency regarding how much Confluence will return to its investors.[767]

In his rebuttal, MHRC witness Jester pointed out that Mr. Heidemann's analysis only examined conditions during the term of the proposed PPA and did not assess conditions after its expiration. Mr. Jester opined that the revenue that Confluence could expect at the end of the PPA is approximately the same as the expected cost of replacement power, which is significantly less than the PPA price.[768] However, he opined that the costs of maintenance and operations would likely escalate with general inflation

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[764] 3 Tr 705, 706.
[765] 3 Tr 706.
[766] 3 Tr 706.
[767] 3 Tr 705.
[768] 3 Tr 664.

such that post-PPA financial conditions for these dams would create significant financial pressure on Confluence.[769]

b. Briefing

The Company argues that HSE is a safe and experienced dam operator, with a strong compliance record, a valid Owners Dam Safety Program, and decades of successful operation across 47 hydro assets. The Company explains that Confluence will be staffed by the same experienced operators and will assume all FERC license obligations, with FERC independently reviewing its technical and financial qualifications. Based on HSE's track record and FERC oversight, Consumers asserts there is no reason to doubt Confluence's ability to safely operate the dams.[770]

The Company emphasizes that most of its current river hydro employees will transfer to Confluence with currently unfilled positions being backfilled, and in describing employee transition matters, the Company largely repeats the direct and rebuttal testimony of Mr. Monroe.[771] [redacted] and therefore concludes that Ms. Mistak's concerns about an exodus of experienced employees is unfounded.[772]

Consumers states that, regarding the possibility that Confluence will resell or "flip" the dams, the Company was diligent in vetting and selecting HSE as a buyer and that HSE has stated that it intends to relicense and safely operate the dams. [redacted]

[769] 3 Tr 664.
[770] See Consumers brief, 50-51.
[771] See Consumers brief, 54-56.
[772] Consumers brief, 55.

[redacted][773] The Company asserts that Confluence has consistently stated that it intends to relicense the dams adding that the length of the PPA provides a strong incentive for Confluence to operate and invest in the dams for the duration of the 30-year PPA.[774] Consumers also highlights that Staff witness Heidemann concluded that Confluence would have the financial capability to maintain the dams, and Consumers concludes that it "does not believe that there is any meaningful risk that Confluence Hydro will flip the dams because the transaction ensures that the dams will be valuable long-term assets to Confluence Hydro[.]"[775]

In its briefing, Staff states that the Commission would have no jurisdictional authority over any potential decision by Confluence to sell or transfer the dams to another entity.[776] Staff argues further that Consumers would also have little recourse if Confluence decided to resell the dams [redacted][777] Staff asserts that it is unfortunate that "there is nothing in the Company's rebuttal which provides further support or evidence of any long-term commitments or obligations that would ensure Confluence will continue to operate these dams into the future."[778] Staff opines that given

[773] Consumers brief, 52-53 (citing Exhibit A-47).
[774] Consumers brief, 53 (citing Exhibits A-47, A-48, A-49, A-50, and A-51).
[775] Consumers brief, 53.
[776] Staff brief, 18.
[777] Staff brief, 18 (citing Confidential Exhibits A-1 and A-2, as well as Conf 3 Tr 975, 1221).
[778] Staff brief, 42.

HSE's history of quickly buying and divesting dams, "simple assurances from it of its intentions to hold these assets long-term is not convincing in itself that it will do so."[779]

Staff raises concerns about the different nature of Confluence as compared to Consumers. As a regulated utility, Consumers can recover all costs necessary to operate and maintain the dam through rates whereas Confluence is a subsidiary of a private equity firm and can only generate revenue from the PPA.[780] Staff asserts that Confluence has not provided specific or detailed financial assumptions or plans for how it intends to maintain and relicense the dams. Staff argues that "without a financial structure that ensures recovery of the *costs spent to maintain* the Hydro fleet, rather than *paying on production from the Hydro fleet*, there is real risk that Confluence may not have the financial ability to maintain the Hydro fleet."[781]

In this vein, Staff acknowledges that MHRC witness Jester reached opposite profitability conclusions in modeling Confluence's financial situation because Staff relied on assumptions made by Confluence while MHRC relied upon the Company's projected relicensing business case in Exhibit A-6.[782] Staff asserts that if Confluence's numbers are correct, then Confluence appears capable of maintaining the dams, but that result undermines Consumers' claim that relicensing is too costly. But if the Company's Exhibit A-6 numbers are correct, Confluence would lack sufficient revenue and the sale would be dangerous.[783] Staff argues this discrepancy shows that Consumers' own numbers either exaggerate relicensing costs or imply the sale poses an unacceptable risk, raising

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[779] Staff brief, 43.
[780] Staff brief, 50.
[781] Staff brief, 51.
[782] Staff brief, 58, 59.
[783] Staff brief, 59-60.

questions about the reliability of the analysis provided by both Consumers and Confluence.[784]

Staff asserts that the corporate structure proposed by Confluence, in which Confluence creates 13 subsidiary LLCs to individually own the dams, creates an issue with the assignment of any liabilities associated with any of the dams if a major issue or bankruptcy should arise.[785] For that reason, Staff recommended imposition of a Parent Guarantee as a condition of the sale as discussed more fully in Section E(1) of this PFD, *infra*.

In her brief, the Attorney General recapped the concerns already raised in Mr. Coppola's testimony.[786] The Attorney General also addressed Mr. Blumenstock's rebuttal that sought to explain how Confluence could upgrade and operate the dams at a significantly lower cost than Consumers. The Attorney General notes that Mr. Blumenstock mentioned structural cost difference between Consumers and Confluence and optimization steps Confluence could employ, but these were suppositions with no real details.[787] The Attorney General acknowledged that Mr. Blumenstock testified that Confluence estimated lower generation volumes (and hence lower cashflow), could minimize negative cashflow by delaying or expediting projects, and could access debt. However, she stated that Mr. Blumenstock could not explain what would happen if the strategies he mentioned were insufficient to allow Confluence to continue to operate. She argues that the Company's rebuttal lacks substance and underlines the need for the

[784] Staff brief, 59-60.
[785] Staff brief, 47.
[786] See Attorney General brief, 30-34.
[787] Attorney General brief, 35.

Attorney General's recommendation to require HSE to make a fuller financial commitment to Confluence (as is discussed in more detail in Section E(1) of this PFD, *infra*).[788]

In its brief, the DNR states that many of the Company's statements regarding Confluence are based upon Mr. Blumenstock's high regard for HSE and Confluence and what he believes their plans entail. However, the DNR argues that neither Mr. Blumenstock nor Consumers offers any evidence that Mr. Blumenstock can speak for HSE or Confluence, nor can his statements bind them to any future actions.[789] The DNR points out that HSE is not a party to this case, and while Confluence is a party, Confluence declined to provide any sworn testimony.[790] The DNR argues that Consumers' repeated assertions about what Confluence plans to do are the type of "uncorroborated hearsay" that cannot form the basis of the Commission's decision.[791]

The DNR argues that the proposed transaction does not legally require Confluence or HSE to relicense or continue to operate the dams; rather, it only incentivizes them to do so, and they are free to disregard that incentive for any reason.[792] The DNR discounts statements that Confluence intends to relicense and keep the dams because intentions and incentives change regularly as circumstances change.[793] The DNR also casts doubt on assertions that Confluence will relicense the dams because Confluence has not prepared an estimate of how much it would cost to relicense the dams, nor is it reasonable

[788] Attorney General brief, 36.
[789] DNR brief, 6.
[790] DNR brief, 6.
[791] DNR brief, 6 (citing *Dillon v Lapeer State Home & Training Sch*, 364 Mich 1, 8 (1961)).
[792] DNR brief, 7.
[793] DNR brief, 8.

to believe that it could do so for hundreds of millions of dollars less than an experienced utility like Consumers Energy.[794]

The DNR urges the Commission to consider that HSE has flipped 46 of the 47 dams that it has ever owned within 2-4 years after purchase, and the only reason HSE did not flip the 47th was because the buyer backed out of the deal.[795] It is unreasonable, the DNR contends, to believe that HSE will change its business model, particularly when it was unwilling to contractually bind itself a course of action that would legally require it to relicense and continue operating the dams.[796]

The DNR questions Confluence's ability to operate the dams because it is a new shell company with no record of owning or operating dams. While Confluence's parent, HSE has owned several dams, it is not a party to this case and owned dams for only a short period before divesting them.[797]

The DNR also questions the business case for Confluence to own the dams. The DNR argues that if Consumers cannot profitably relicense and operate the dams for $1.842 billion, it is unclear how Confluence could do so and profit at $1.252 billion under the sale and PPA, especially since neither Confluence nor Consumers has provided testimony explaining this discrepancy. The DNR argues that Confluence is pursuing the deal because it (or another entity that it ultimately sells the dams to) expects to delay costly dam-safety upgrades outside Commission oversight with no repercussions from

[794] DNR brief, 9-10 (citing in part Exhibit DNR-33, p. 3).
[795] DNR brief, 8-9.
[796] DNR brief, 9.
[797] DNR brief, 15.

FERC, all while still collecting long-term revenue from ratepayers through the PPA without making the substantial investments Consumers would.[798]

The DNR argues that because private dam owners can shield themselves from liability through layered LLC structures and the bankruptcy process, the financial burden of dam failures ultimately falls on the public.[799] Despite claims that the proposed transaction shifts liability away from ratepayers, the record shows that the new ownership structure is a thinly capitalized shell unlikely to cover major future liabilities such that taxpayers will still end up bearing the costs if something goes wrong.[800]

MHRC repeats testimony from witness Jester highlighting that Consumers and Confluence cannot adequately explain how Confluence can relicense and operate the dams at a cost projected to be far lower than Consumers' own relicensing estimates.[801] MHRC provided several arguments to counter Mr. Blumenstock's suggestion that the Company's overhead and differing cost structures account for this difference. First, MHRC argues that Mr. Blumenstock's claim about the Company's nearly 47% overhead is unsupported because Consumers Energy provides no evidence for such a large adder.[802] Second, MHRC notes that Mr. Blumenstock's assertions about Confluence's cost structure and risk tolerance lack credibility since he never spoke with Confluence about that topic and cannot explain why it could operate the dams vastly cheaper than Consumers using the same workforce.[803] Third, MHRC rejects the Company's

[798] DNR brief, 19.
[799] DNR brief, 21, 22.
[800] DNR brief, 22, 23.
[801] MHRC brief, 30, 31.
[802] MHRC brief, 32.
[803] MHRC brief, 32.

"all-or-nothing" framing by showing that individualized decisions, like relicensing some dams and decommissioning others, would save substantial money for ratepayers.[804] Finally, MHRC rejects the Company's characterization that Confluence has a proven record of financial responsibility noting company was only created in 2025 and has no meaningful track record to support that claim.[805]

MHRC repeated large portions of Dr. Lyon and Mr. Jester's testimony to argue that Confluence will likely underinvest in dam safety or will divest unprofitable dams.[806]

MHRC reiterates points from several witnesses to argue that selling the dams to a profit-driven private equity firm would remove critical regulatory oversight and create serious risks that necessary repair and future decommissioning costs could be avoided, underfunded, or shifted onto taxpayers and ratepayers, unlike under regulated utility ownership where safety-related spending is assured.[807] MHRC also reiterated large portions of the testimony of Dr. Lyon and Mr. Wedoff to warn about the dangers of private equity ownership given its profit and cost-cutting motives, the possibility that Confluence will be "judgment proof" and unable to satisfy potential liabilities, and the possibility of a fraudulent transfer action.[808] Similarly, MHRC repeats portions of Mr. Jester's testimony warning about Confluence's corporate structure and the use of multiple LLCs and the bankruptcy process to limit liability from any potential accident or dam failure such as Boyce Hydro, LLC did after the Edenville dam failure.[809] MHRC asserts that while Mr.

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[804] MHRC brief, 32.
[805] MHRC brief, 33.
[806] See MHRC brief, 44-50.
[807] See MHRC brief, 40-42.
[808] MHRC brief, 42-43, 48-49; 63-65.
[809] MHRC brief, 66.

Blumenstock pointed to a federal summary judgment decision to show that Boyce Hydro was not judgment proof, he misunderstood the term because Boyce Hydro's bankruptcy meant it could not be held accountable for damages, and even he could not identify any instance where Boyce Hydro or its owner actually paid damages.[810]

MHRC also repeats Mr. Jester's testimony to argue that Confluence can and likely will sell all or some of the 13 dams given the history of its parent company HSE flipping dams, the lack of contractual obligations preventing that outcome, and other factors.[811]

MHRC contends that the Commission cannot be assured that Confluence intends to assume all liabilities associated with dam ownership, including eventual decommissioning, because it has stated that the dams have perpetual viability.[812]

In its reply, Consumers asserts that several parties misconstrue the nature of the Commission's oversight and suggest that it has regulatory roles that it does not possess. The Company emphasizes that the Commission derives its authority only from statute and has no common-law powers, and statutory grants of its authority, while numerous, relate to ratemaking and issues closely related to utility services.[813] Consumers asserts that the Commission has no specific statutory authority to require particular investments at dams, regulate dam safety measures, regulate water quality or public access to project lands, or several other matters suggested by intervenors.[814] Consumers states that "[t]he Legislature has not given the Commission regulatory authority over *dams* per se. It has given the Commission regulatory authority over *Consumers Energy—as a public utility—*

[810] MHRC brief, 67.
[811] MHRC brief, 57-59.
[812] MHRC brief, 65-67.
[813] Consumers reply, 3-4.
[814] Consumers reply, 5.

but only to the extent of [specific grants of statutory authority]."[815] The Company objects that intervenors imply that the Commission has "some kind of indirect regulatory control over these issues as a byproduct of its ratemaking authority[,]" but that such a view is improper under caselaw.[816] Instead, Consumers asserts that the Commission is an economic regulator that determines what reasonable and prudent costs can be recovered, and this actually acts as negative check on the Company's spending rather than a license to spend freely on safety measures as intervenors suggest.[817] The Company cites the Commission's previous reluctance to grant cost recovery for safety invests at the Hardy dam (given that its future was in question) as an example of how the Company cannot always recover dam safety costs.[818]

The Company criticizes intervenors for relying on speculative worst-case scenarios that do not constitute proof under MCL 460.6q. Consumers states that the common structure of such intervenor arguments is to: (1) assume Confluence will act opportunistically; (2) assume FERC will fail to ensure safety for extended periods; and (3) assume that if the previous two steps occur, then the State and customers will bear catastrophic consequences. Similarly, the Company pans intervenors for drawing parallels to the Edenville and Au Train scenarios when the Company contends that there is no meaningful similarity, and that such arguments about worst-case scenarios invite unwarranted speculation.[819]

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[815] Consumers reply, 5.
[816] Consumers reply, 6-7.
[817] Consumers reply, 7, 8.
[818] Consumers reply, 10.
[819] See generally, Consumers reply, 12-14.

Further, the Company argues that private ownership of dams is not contrary to the public interest because the majority of U.S. dams are privately owned and incidents like the few cited by DNR and MHRC are statistically negligible and not evidence of a broader problem.[820] Consumers argues that speculative fears about a private owner's future solvency are unfounded because the record shows Confluence can cover its obligations, and the Commission must evaluate this specific transaction, not extreme, unrelated past failures, when deciding whether it meets the standards of MCL 460.6q.[821]

Consumers argues that the intervenors' criticism of Confluence's use of LLCs is misplaced because LLCs are a standard, widely used structure that enables efficient capital formation and risk management without reducing regulatory obligations. Moreover, using separate LLCs for each dam protects communities and customers by preventing a problem at one facility from undermining the finances of entire hydro fleet, making the intervenors' claims speculative and misguided.[822]

Consumers argues that MHRC's "fraudulent transfer" theory is an unfounded scare tactic because it relies on extreme, speculative assumptions that do not match the facts of this transaction, and the record shows no imminent risk of dam failure.[823]

The DNR's reply repeats arguments from its initial brief expressing skepticism that Confluence could profitably relicense and operate dams when Consumers could not do so.[824]

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[820] Consumers reply, 14-15.
[821] Consumers reply, 15.
[822] Consumers reply, 15-17.
[823] Consumers reply, 17.
[824] DNR reply, 1-2.

MHRC's reply emphasizes that: (1) Confluence is newly formed with no track record of operating dams; (2) Confluence's corporate structure with 13 separate LLCs enables bankruptcies that could transfer liabilities taxpayers; (3) there are at least five layers of corporate entities between the 13 individual LLCs and HSE; and (4) HSE, as the parent company, has a history of flipping almost every dam that it has ever owned.[825] MHRC also argues that Confluence submitted no supporting testimony and yet still argues in its brief that the PPA will allow it to safely and profitably relicense and own the dams long-term despite [redacted][826] [redacted][827] MHRC points out that Confluence never explained how it would turn a profit on the dams. Instead, Consumers' witness, Mr. Blumenstock, provided unsubstantiated speculation about how Confluence might increase profitability without speaking to Confluence about how it planned to operate the dams.[828] MHRC argues: "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."[829]

[825] MHRC reply 4-5.
[826] MHRC reply, 5.
[827] MHRC reply, 10.
[828] MHRC reply, 10-11.
[829] MHRC reply, 12.

MHRC rejects the Company's argument in briefing that, while the transaction documents may not require or prohibit certain undesirable actions, they nevertheless work together to establish a "comprehensive scheme of incentives that will assure the desired results."[830] MHRC replies that there are no contractual safeguards and that the agreement would allow Confluence to immediately sell the dams to a third party, bankrupt an unprofitable dam and its associated LLC at any time without recourse, choose not to produce power from any dam at any time, and sell the land around a dam if the project boundaries are changed at relicensing.[831] Further, MHRC reiterates that [redacted] and that the EIA does not sufficiently cover the substantial environmental or operational risks.[832]

Finally, MHRC argues that there is a disconnect between what Consumers says the deal accomplishes and what Confluence plans to do. MHRC explains that Consumers asserts that the transaction offloads to Confluence "end of term cost risk" associated with the dams, including eventual decommissioning.[833] However, MHRC points out that Confluence has no intention of ever decommissioning the dams or setting aside funds for that purpose because it stated in discovery that it believes the dams have "perpetual viability."[834] MHRC cites exhibits from the DNR to explain that dams do not have perpetual

[830] MHRC reply, 12 (quoting Consumers brief, 10).
[831] MHRC reply, 14.
[832] MHRC reply, 14-15.
[833] MHRC reply, 23 (citing Exhibit MHRC-83, 3 Tr 156-157).
[834] MHRC reply 23, 24 (citing Exhibits MHRC-53, MHRC 54, and DNR-35).

viability and that all dams inevitably face retirement.[835] MHRC asserts that Consumers, as a rate-regulated utility that can recover costs for prudent expenses and that has been collecting decommissioning funds, is the proper entity to transition dams to decommissioning when appropriate.[836] MHRC argues: "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."[837]

Confluence's reply challenges intervenors' arguments that private ownership of dams is inconsistent with public policy or interest under MCL 460.6q(7)(e). Confluence asserts that parties object to private ownership because it removes the Commission's jurisdiction, but private, non-utility ownership of dams is common in Michigan and has never been restricted or prohibited by the Legislature such that it cannot be inconsistent with public policy or interest.[838]

Confluence also argues that MHRC frames the transaction as transferring risk to taxpayers and ratepayers when the opposite is true. Confluence explains that under Consumers' ownership, its ratepayers are responsible for costs related to the dams including operations, maintenance, upgrades and decommissioning. By contrast, Confluence states that the proposed transaction would transfer responsibility for those costs from ratepayers to Confluence as the new owner.[839]

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[835] MHRC reply, 24 (citing Exhibit DNR-12).
[836] MHRC reply, 24.
[837] MHRC reply, 24.
[838] Confluence reply, 4-5.
[839] Confluence reply, 8.

Confluence criticizes intervenors for making "hypothetical and conjectural claims about what Confluence's future actions and intentions may be" and argues that they provide no evidence to support their claims that Confluence will not continue to own and operate the dams.[840] Confluence repeats Consumers' statement that are only a few specialized businesses with the experience and expertise to own and operate hydroelectric facilities, Confluence is among them, and Confluence has consistently stated that it intends to relicense and continue operating the dams.[841]

In its reply, Confluence disputes MHRC's contention that the dams continue to impair the rivers and that Confluence has no plan to mitigate water quality and dam safety issues. Confluence argues that, to the contrary, it has committed to relicensing all thirteen dams which requires compliance with FERC's dam safety requirements.[842]

c. Analysis

Six main topics of contention emerge from the parties' numerous concerns about Confluence as an owner of the hydroelectric dams, and each point of concern will be analyzed further below.

i. Implications of Private Ownership and MPSC Jurisdiction

Staff and several intervenors warned that private ownership of hydroelectric dams poses significant safety risks because it removes the owner from the MPSC's oversight. However, as Consumers correctly notes, the MPSC is not a safety regulator with respect to hydroelectric dams.[843] Instead, the safety-related benefits that intervenors cite flow

[840] Confluence reply, 9.
[841] Confluence reply, 9.
[842] Confluence reply, 10.
[843] While the MPSC is not a safety regulator itself regarding hydroelectric dams, MCL 460.6q(7) does task the Commission with evaluating whether the proposed sale "would have an adverse impact on the provision

from the unique regulatory model that governs rate-regulated utilities under the Commission's jurisdiction.

As a rate-regulated utility, Consumers can invest in required safety measures and can receive cost recovery through rates or Commission-authorized rate increases. In fact, Consumers acknowledges that the unique regulatory model for utilities allows it to profit from any investment in the dams that the Commission approves for inclusion in the Company's rate base.[844] In short, Consumers is structurally incentivized to make safety-related investments because it can recover, and potentially even profit from, those expenditures.[845]

By contrast, Confluence is not a rate-regulated utility and therefore does not receive the protection or benefit of the regulatory model applied to rate-regulated utilities under the Commission's jurisdiction. Its revenue depends solely on the PPA, and it cannot raise rates to recover unexpected future costs.[846] Any required upgrades or safety measures reduce its profits, and, unlike a rate-regulated utility, it has little financial

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of *safe*, reliable, and adequate energy service in this state[.]" MCL 460.6q(7)(b) (emphasis added). Thus, while not a safety regulator itself, the Commission is specifically directed to evaluate how a proposed action, like the sale in question, will affect safety concerns.

[844] 3 Tr 115.

[845] Consumers argues that the Commission's oversight acts as a "negative check" on its safety spending. Consumers reply, 7. But this is not problematic in the way Consumers suggests. Because the regulatory model allows Consumers to recover or even earn a return on safety-related investments, the Commission must determine whether such spending is reasonable. Thus, the Commission may disallow even safety-related costs if they are imprudent. The Company's own Hardy Dam example illustrates this: the Commission questioned major safety investments not to block necessary upgrades, but because the asset's uncertain future made the mammoth expenditures potentially unjustified. This reflects appropriate regulatory scrutiny, not an impediment to essential safety-related work. See Consumers reply, 9-10.

[846] In the context of the proposed PPA, Confluence included contractual safeguards for specific known risks by including conditions that would allow it to increase the base PPA price based upon cost overruns for certain projects at Hardy and Rogers dams. See 3 Tr 53-54. However, Confluence cannot alter the PPA price to account for unforeseen conditions that may arise over the 30-year course of the PPA.

incentive to make such investments because it cannot recover such costs in rates or earn a return on them.

As suggested by witnesses Lyon, Wedoff, Jester, and others, a private owner directly bears the costs of ownership including maintenance and safety measures, and it therefore has a financial incentive to minimize such spending to maximize profit. Such cost-minimization increases the risk of safety-related issues, and such risks are generally avoided under Consumers' ownership structure, which provides stronger incentives to prevent adverse events that could harm Consumers' reputation or its shareholders.

In sum, private ownership presents a distinct risk profile that is not present under regulated utility ownership. For public utilities, the regulatory model aligns profitability with safety by providing cost-recovery mechanisms and even allowing returns on certain approved investments. In contrast, private owners lack these mechanisms, making maintenance and safety-related expenditures costs that private owners would naturally seek to minimize. This dynamic creates a potential misalignment between financial incentives and long-term safety goals.

To be clear, this PFD does *not* suggest that private ownership should inherently be disfavored or that it is contrary to any specific public policy. Further, the fact that the Commission would lose jurisdiction because of a sale to a private entity should generally not, by itself, be considered as a strike against the proposed transaction. Rather, the distinct and elevated risks associated with private ownership should be evaluated by rigorously scrutinizing the specific private owner's reputation and history, the owner's technical capability and financial capacity, and the regulatory paradigm of the agency responsible for dam safety and how that paradigm shapes outcomes under private

ownership. These concerns are critical in evaluating how private ownership by a specific entity will affect safety, and these concerns will be evaluated in the following sections of this PFD. Further, it is proper to do so given that MCL 460.6q(7)(b) specifically directs the Commission to consider whether a proposed action, like the sale in question, will have an adverse impact on the provision of safe energy service in this state.[847]

ii. Confluence's Technical Capabilities

Both the Attorney General and the DNR question Confluence's capability to operate the dams given its status as a new shell company, while Staff considers Confluence to be a competent operator of hydro facilities.

While it is true that Confluence is a newly created shell company, fears regarding its competence to operate the dams are allayed by two facts identified by Staff. First, Confluence's parent company, HSE, has experience operating several hydro facilities, and that experience can reasonably be imputed to Confluence as a subsidiary which will receive support and direction from HSE. Second, and more importantly, most Consumers employees that currently operate the dams will be transferred to Confluence under the terms of the proposed transaction.[848] This ensures that Confluence would immediately have a capable and experienced workforce in place if the transaction is approved. While the DNR questioned whether those employees would stay with Confluence, there is record evidence that Confluence proposed meaningful incentives to convince experienced employees to remain with Confluence.[849] Thus, Confluence's technical ability to operate the dams is a point of relatively minor concern.

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[847] See MCL 460.6q(7)(b).
[848] 3 Tr 182.14-182.15.
[849] Conf 3 Tr 1043.

iii. Confluence's Financial Capabilities & Business Case

Staff, the Attorney General, and MHRC analyzed the business case for relicensing or owning the dams from Confluence's perspective and identified significant concerns. The Attorney General and MHRC both examined Confluence's business case by utilizing the estimated relicensing and ownership costs estimated by Consumers in its relicensing business case. MHRC witness Jester's modeling demonstrated that if Confluence relied on Consumers' relicensing projections, then acquiring and continuing to own the dams for 50 years would result in a $710 million NPV loss. [redacted][850] [redacted][851] [redacted][852]

The conclusions drawn by the intervenors are supported on the record and are alarming. The difference in estimated relicensing costs is not a minor gap, but more akin to a gapping chasm. Further, the difference between these expenditure projections is consequential. If the relicensing estimate consistent with Consumers' relicensing business case (i.e. Exhibit A-6) is realistic, then this calls into question whether it is a

[850] See e.g. Conf Exhibits AG-12 and MHRC-55.
[851] Compare Conf Exhibit AG-12 with Exhibit A-6, column (c).
[852] Conf 3 Tr 1082.

rational business decision for Confluence to enter the transaction. Conversely, if Confluence's relicensing estimates are correct, then it would undermine the rationale for Consumers to divest the dams in the first instance because Consumers could presumably relicense the dams itself at a significantly lower expense than it now projects. Both Staff and MHRC highlight this dilemma.[853] While some difference in each party's expense forecasts is expected, since both parties must see value in the deal, the sheer magnitude of the gulf between the Company's estimate and Confluence's estimate cannot be dismissed as insignificant.

The Company's effort to allay concerns about these differing projections offers context but is ultimately insufficient to dispel the underlying concerns. For example, Mr. Blumenstock objected that some intervenors assume that Consumers' expenses under a relicensing scenario should be the same as Confluence's expenses. He asserted that this was not the case as this would exclude the Company's overhead and environmental adders, and Mr. Blumenstock stated that removing overhead would reduce spending to 53.4% of the forecasted amount, implying that overhead was 46.6% of the forecasted relicensing spending.[854] It is not clear how Mr. Blumenstock arrived at that figure as it was provided without citation or further explanation. But in any event, for reasons already addressed in the business case modeling, the Company's overhead and environmental cost adders are suspect. Moreover, if Consumers is correct that substantial overhead is required to execute this relicensing work, then Confluence must also bear some level of

[853] Staff brief, 58-60; MHRC brief, 30-33.
[854] See 3 Tr 121.

similar costs, which would materially increase its costs and weaken the viability of its business case.

Mr. Blumenstock also asserted that the Company's cost structure and long-term risk tolerance are different from that of Confluence.[855] However, in discovery Mr. Blumenstock admitted he did not have knowledge of Confluence's cost structure and simply pointed to the general organizational differences between an established electric and gas utility and a newly formed hydropower-only company.[856]

Mr. Blumenstock further rejected the analysis of the intervenors because Confluence: (1) may see value beyond the 30-year PPA; (2) can employ industry optimized practices to lower costs; and (3) may have opportunities to purchase other river hydro facilities such that it is possible that Confluence's costs will be lower than the Company's.[857] But these assertions do not convincingly dispel concerns raised by the intervenors.

First, Mr. Jester modeled both the 30-year PPA term and a full 50-year license horizon,[858] and it is unclear what additional "value" Mr. Blumenstock believes was omitted. Even when asked to clarify this point in discovery, Mr. Blumenstock could not quantify any such value, pointed out the already apparent fact that there is value in the energy and capacity provided by the dams, and stated there may be other valuable aspects that are "unknown at this time."[859] Such a response is not informative. In any event, the

[855] 3 Tr 118.
[856] Exhibit AG-21, p. 1.
[857] 3 Tr 118.
[858] See 3 Tr 614-616; 620-621.
[859] Exhibit MHRC-75, p. 2.

existence of any unknown future value Confluence could attribute to the dams is entirely speculative and does not change the capital costs required to relicense them.

Second, the reference to Confluence employing "industry-optimized practices" raises more questions than answers. Mr. Blumenstock did not specify what these practices are in his testimony, but through discovery he stated that, because Confluence is focused on hydro generation, it could optimize supply chain procurement, engineering services, manufacturing support, and can "leverage expertise from their other river hydro generation."[860] But Confluence is newly formed and has no other river hydro generation; even Confluence's parent HSE sold off almost all of its previously owned hydroelectric dams. Additionally, it is not clear why Consumers, having owned the dams for multiple decades at a minimum, could not or has not already optimized its hydroelectric division to reduce costs in the same way that Confluence ostensibly could.[861]

Third, the suggestion that Confluence might benefit from economies of scale by purchasing other hydro facilities is entirely speculative and contingent on future acquisitions that may never occur or that may never generate the expected level of operational efficiencies. In sum, these three specific grounds identified by Mr. Blumenstock for questioning intervenor modeling provide a sharply limited and largely speculative refutation.

[redacted]

[860] Exhibit AG-21, p. 1.
[861] This assumes that Consumers has not optimized its hydroelectric business. Mr. Blumenstock challenged that assumption in a discovery response by stating that the Company continuously pursues improvements, although he did not specifically assert that Consumers had taken steps to optimize the aspects of the river hydro business that he named as industry optimized practices. See Exhibit AG-21, p. 1-2.

[redacted][862] Mr. Blumenstock's explanations in this vein are somewhat more persuasive, but they also raise new concerns of their own. [redacted][863] [redacted]

Staff specifically modeled Confluence's cashflow using a model derived from WSP to examine its capability to maintain and relicense the dams.[864] [redacted][865] Mr. Heidemann testified that if Confluence needs to borrow to fund repairs and relicensing, then it will likely have enough revenue over the life of the contract

[862] Conf 3 Tr 1025.
[863] Compare Consumers' output figures in Exhibits A-3 with Confluence's in Conf Exhibit AG-12. See also Exhibit MHRC-72.
[864] See generally Mr. Heidemann's testimony at 3 Tr 901-906 and the supporting Exhibits cited therein, including Conf Exhibit S-4.14.
[865] Conf 3 Tr 1310; see also Confidential Exhibit S-4.14.

to cover these imputed costs.[866] Notably, Mr. Heidemann qualified his analysis stating that "[Confluence's] cost of capital would affect the overall profitability of the analysis."[867]

In a related vein, Dr. Lyon criticized Mr. Heidemann's analysis for failing to consider how Confluence's return on equity (ROE) would affect the analysis. He explained that private equity returns average 16.5%, which is higher than the average for publicly traded stocks and far higher than the most recent authorized ROE for Consumers Electric (9.90%). This PFD agrees that the higher ROE expected by private equity investors will likely mean there will be fewer funds available for maintenance and upgrades such that Mr. Heidemann's analysis likely overstates the amount of funds available to Confluence.[868] This PFD further agrees with witness Jester that because Mr. Heidemann's analysis stops at the end of the PPA term, it overlooks that post-PPA revenues would likely align with lower replacement-power costs while maintenance and operating expenses continue to rise with inflation, which could create substantial long-term financial pressure on Confluence.[869]

In sum Confluence's financial ability to safely own and operate the dams appears questionable. The large discrepancy between Confluence's projected capital expenditures and Consumers' own relicensing cost estimates casts doubt on the financial feasibility of long-term ownership and on the Company's relicensing projections as both cannot be accurate given the gulf between them. [redacted]

[866] 3 Tr 906.
[867] 3 Tr 906.
[868] 3 Tr 706.
[869] See 3 Tr 664.

[redacted][870] Combined with the higher return expectations of private-equity ownership and a presumable decline in post-PPA revenues, these financial pressures suggest that Confluence may struggle to sustain the investment necessary to relicense and maintain the dams. Taken together, the evidence indicates that Confluence faces meaningful financial and operational risks that call into question its financial ability to safely own and operate these facilities over the long term. Staff and the Attorney General suggest imposing financial guarantees on HSE to remedy concerns about Confluence's financial stability, and that matter is discussed in Section (E)(1) of this PFD, *infra*.

iv. Confluence's Reputation and History

Intervenors raised concerns about Confluence as a new entity which has no reputation or history of owning and operating hydroelectric dams. While this is true, Confluence's parent HSE has previously owned 47 dams, none of which were cited for safety violations during HSE's ownership tenure.[871] However, that record should be qualified by the fact that HSE's period of ownership for 46 of those dams was relatively brief, owning many for just under three years and owning all but a few others for less than five years.[872] Accordingly, while HSE's safety record is relevant, its limited duration warrants caution in drawing any conclusions about Confluence's long-term ability to safely own and operate a fleet of high-hazard dams.

[870] See e.g. Conf Exhibits AG-12 and S-4.14.
[871] See Exhibit A-52, p. 1.
[872] See Exhibit A-44 (listing HSE's history of dam ownership with acquisition and divestment dates). As is discussed elsewhere in this PFD, HSE continues to own one hydroelectric dam.

Some intervenors, primarily but not exclusively DNR and MHRC, also raised concerns that Confluence would "flip" or sell the dams given HSE's history. Consumers highlights public statements from Confluence that it intends to retain ownership of the dams "for a longer term."[873] However, that phrase has never been defined, and several pieces of evidence raise questions about Confluence's long-term intentions.

First, as discussed above, Confluence's parent company, HSE, divested 46 out of the 47 dams that it has owned, usually with a period of ownership of less than five years.[874] Indeed, many of the dams HSE owned were sold less than three years after acquisition, suggesting that HSE began marketing or positioning those assets for resale very shortly after acquiring them.[875] While HSE currently retains ownership of one dam, it apparently intended to sell that dam, but the potential purchaser backed out of the sale.[876] Thus, HSE's history and reputation suggests that acquiring and flipping dams is its customary business practice.

Second, this acquire-and-flip paradigm aligns with the characteristic business model of a private equity fund. Private equity funds are typically established with a preset duration during which they acquire businesses or assets, implement significant financial restructuring, and ultimately exit the investments within the fund's predetermined duration to return capital to the fund's investors. [redacted][877]

[873] See, e.g., 3 Tr 48.
[874] 3 Tr 847-848; see also Exhibit A-44.
[875] See Exhibit A-44 (listing the dates of HSE's hydroelectric acquisitions and divestments).
[876] 3 Tr 848.
[877] Conf Exhibit MHRC-46, p. 10.

[redacted][879] [redacted][880] In sum, the typical private equity business model and the time-limited duration of typical private equity funds suggests that owning the dams for a long-term, like the 30-year duration of the PPA, is not a common business strategy for private equity firms to pursue.

Admittedly, one discovery response from Confluence is noteworthy because it contrasts with HSE's history of flipping dams. When asked about the basis of Consumers' statements that Confluence intended to hold the facilities "longer-term," Confluence stated that hydroelectric assets are "very long-lived" and therefore "lend themselves to long-term ownership" such that HSE plans to include them in a "permanent hydro-ownership vehicle."[881] Yet, the stated rationale that long-lived dams lend themselves to long-term ownership is very tough to reconcile with HSE's record of swiftly reselling nearly every dam that it has previously acquired. Additionally, the reference to a "permanent hydro-ownership vehicle" seems best read as describing a durable corporate entity rather than a commitment to operating the acquired dams permanently.[882] In any event, Confluence's public statements and discovery responses regarding an intention to

[878] Exhibit MHRC-68.
[879] Conf Exhibit MHRC-46, p. 11.
[880] Conf Exhibit MHRC-46, p. 10.
[881] Exhibit LAA-2, p. 5.
[882] In other words, although an ownership vehicle such as an LLC (like Confluence) may exist on a permanent basis, the assets it possesses are not necessarily permanently held and may be divested at any time.

hold the dams for an undefined "longer term" should be understood as aspirations rather than binding assurances of future conduct. Indeed, some of Confluence's discovery responses regarding its future conduct seem difficult to interpret in any other way.[883]

Third, there is the PPA itself. Consumers and Confluence assert that the 30-year duration of the PPA incentivizes Confluence to maintain ownership for that period, and it is true that the PPA can provide such an incentive. But nothing in the proposed transaction meaningfully prevents Confluence from divesting the dams. [redacted][884] [redacted][885] Thus, Confluence is at liberty to divest the dams with relatively minimal constraints if it desires to do so. Several intervenors have emphasized that Confluence is a for-profit entity that is ultimately owned by a private equity fund and can be expected to act accordingly. Thus, as a rational economic actor, it should be expected to take steps to maximize profit. If, at any point, selling the dams would unlock greater value than holding them under the PPA, a rational economic actor would choose to sell. This logic is particularly poignant given Confluence's own financial projections regarding the dams discussed in the previous section, *supra*.

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[883] For example, in one discovery response Confluence states that it intends to relicense the dams not just when their current licenses expire (between 2034 and 2041) but a second time when those renewed licenses expire. See Exhibit LAA-2, p. 6. Assuming a standard 50-year FERC license, Confluence's statement refers to an action it will allegedly pursue more than half a century from now. Given the inherent uncertainty in long-term economic and operational conditions, such representations necessarily warrant great skepticism because the feasibility of relicensing decisions so far into the future cannot reasonably be known at this time.

[884] See Confidential Exhibit A-2, p. 48; see also Conf 3 Tr 975, 1221.

[885] Confidential Exhibit A-1, p. 417; see also Conf 3 Tr 975, 1221.

Taken as a whole, the record demonstrates a meaningful risk that Confluence will not retain long-term ownership of the dams. HSE's extensive history of acquiring and quickly divesting hydro assets, combined with the time-limited structure of most private-equity funds, strongly suggests that holding the dams for decades is inconsistent with its customary business model. Confluence's statements about "long-term" ownership are at best aspirational and not binding, and the transaction documents pose no meaningful barrier to a future sale. As a profit-driven entity backed by private equity, Confluence can be expected to pursue whichever option maximizes its financial return, including selling the dams if doing so is more advantageous than operating under the PPA. On this record, it is reasonable to conclude that the possibility of a future sale is significant and cannot be dismissed as easily as the Company suggests.

v. Corporate Structure and Liability

Some intervenors, primarily but not exclusively MHRC, take great pains to highlight potential risks in allowing Confluence to own the dams given its corporate structure involving multiple separate LLCs and the likelihood that this would allow it to avoid liability or become "judgment-proof." By contrast, the Company argues that LLCs are common corporate structures that are customarily utilized to set up business transactions.

Two noncontradictory propositions can simultaneously be correct, and these dueling arguments by the Company and MHRC illustrate that proposition. The Company is correct that LLCs are common corporate entities and that they provide a societal benefit by encouraging investors to take risks by limiting liability. Indeed, given its name, it is unsurprising that one of the primary purposes of a corporate form like a limited liability company is to limit its owner's liability. However, MHRC is also correct that Confluence's

corporate structure, composed of several LLCs with each dam being owned by a separate LLC, could effectively allow Confluence to become judgment-proof.

The term “judgment-proof” is a specialized term in the legal community that refers to an entity against whom a court judgment cannot be effectively satisfied because it lacks sufficient assets or other legally recoverable resources to satisfy the judgment, including situations where an entity’s limited assets could be quickly exhausted or shielded by bankruptcy proceedings. This understanding of the term is the same as that generally used by Dr. Lyon in his testimony.[886] This PFD agrees that if the dams are held in individual LLCs, which are in turn owned by Confluence (itself an LLC), then Confluence is likely to be judgment-proof. In other words, since LLCs are separate and distinct legal entities, and since each LLC owns a separate dam, any judgment arising from an accident at a particular dam would reach only the assets of that specific LLC (which may be minimal or non-existent) and not necessarily the assets of HSE, Confluence, or Confluence’s other subsidiary LLCs.[887]

This PFD agrees with MHRC that a collateral consequence of an entity’s “judgment-proof” status is that it may lack incentives to invest in operational safety measures because the risk and reward incentives become misaligned. In other words, when the entity that operates a facility bears little or no financial exposure for the consequences of unsafe practices, it has reduced economic motivation to make investments that would mitigate those risks. This PFD also agrees with MHRC that this

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[886] See 3 Tr 677; 680-681.
[887] For purposes of this example, this PFD does not address doctrines such as piercing the corporate veil or various other legal theories that might allow liability to extend beyond the individual LLC.

situation would, in effect, shift risk onto local residents or the State's taxpayers who may have to foot the bill if a disaster occurs at a dam. In this respect, the examples of the events at the Edenville/Sanford and Au Train dams, which have been described in detail by multiples parties, are instructive.

In this vein, this PFD will resolve a minor issue disputed at length by the parties related to the Edenville dam disaster. Relying on a federal court's summary-judgment decision against Boyce Hydro LLC (the owner of the failed Edenville dam), Mr. Blumenstock contended that Boyce Hydro was not judgment-proof, even with its complicated LLC ownership structure. However, the summary judgment decision itself noted that a bankruptcy proceeding precluded the entry of monetary damages and that the court could only enter declaratory relief.[888] In any event, even the entry of a monetary judgment does not negate an entity's judgment-proof status; rather, an entity is judgment-proof when a monetary judgment cannot be meaningfully collected from it. Through cross examination, Mr. Blumenstock confirmed that he lacked any knowledge as to whether Boyce Hydro had ever paid monetary damages to the State resulting from the Edenville dam failure.[889] In sum, there is no evidence in this record to contradict testimony from other witnesses that the owners of the Edenville dam were essentially judgment-proof.

Returning to the primary analysis, the Commission must determine whether the proposed transaction would adversely affect the safe provision of energy service. This PFD does not suggest that ownership through LLCs or similar corporate structures is

[888] Exhibit A-42, p. 2.
[889] 3 Tr 148.

inherently problematic; such liability-limiting entities are standard in business transactions, and it would be improbable that any buyer would purchase the dams without using some form of limited-liability entity. However, Confluence's proposed corporate structure does present the significant risks outlined above, which must be considered. Accordingly, just as with more general concerns above about private ownership, discussed *supra*, heightened attention must be given to evaluating Confluence's reputation and history, its technical and financial capacity, and the regulatory framework governing dam safety. A careful assessment of these factors is necessary to determine whether the transaction will negatively affect the safe provision of energy service. Further, Staff and the Attorney General suggest imposing financial guarantees on HSE to remedy concerns about Confluence's corporate structure, and that matter is discussed in Section (E)(1) of this PFD, *infra*.

vi. Fraudulent Transfer Issues

MHRC witness Wedoff provided significant testimony about the possibility that a fraudulent transfer action could be brought under Michigan law or the federal bankruptcy code to void the sale and return ownership of the dams and associated liabilities to Consumers (and thus, its ratepayers) in the event of a disaster at one of the dams.[890] Consumers disputed this contention and drew distinctions between the proposed transaction and the cases cited by Mr. Wedoff.

This PFD believes it is unnecessary to definitively resolve the analogies and distinctions that could be made between the current transaction and those presented by

[890] See generally, 3 Tr 495-498.

Mr. Wedoff's recitation of caselaw. Instead, it is sufficient to note that a fraudulent transfer action is a theoretical possibility, although its prospects for success are certainly questionable for at least some of the reasons stated by the Company in its briefing. Further, such legal actions would eventually become time-barred as they have statutes of limitation that would run out within a relatively short timeframe when compared against the 30-year timeframe of the PPA.[891] Accordingly, while this PFD acknowledges that a fraudulent transfer action is a possibility, one is relatively unlikely to occur within the required timeframe, and its prospects for success would be questionable. Accordingly, this PFD does not believe that the possibility of a fraudulent transfer action should play a significant role in the Commission's deliberations.

2. FERC's Regulatory Oversight and Safety

a. Testimony

Mr. Monroe testified that the Company reviewed potential buyers' safety records, including whether they had an Owners Dam Safety Program (ODSP), their experience operating hydroelectric dams, and their relationship and compliance history with FERC;[892] he asserted that HSE and Confluence were qualified.[893] He testified that HSE, Confluence's parent company, has extensive experience owning and operating hydroelectric facilities because it acquired and improved 47 hydro assets in the past

[891] See 3 Tr 497 (In which Mr. Wedoff, citing § 548 of the bankruptcy code, MCL 566.39, and MCL 600.5813, asserts that fraudulent transfer actions would have to be brought within 2 years of the transaction under bankruptcy code and within six years under Michigan law).
[892] The Federal Energy Regulatory Commission.
[893] 3 Tr 179-180.

decade.[894] He explained that HSE currently operates the Boott Hydro facility in Massachusetts with a strong safety record, an ODSP, and no material safety violations.

Mr. Monroe explained that FERC comprehensively regulates hydroelectric dams including dam safety, environmental protections, and operations, and that the FERC project license for each dam, which impose a variety of obligations, will be transferred to Confluence.[895] He stated that FERC would review Confluence's technical and financial ability to safely maintain the dams as part of the license transfer process.[896] Further, Mr. Monroe testified that the Company's hydro employees will transition to Confluence such that it will immediately have a safe and qualified workforce operating the dams, and he added that any union employees who choose to stay with the Company will be backfilled so staffing levels remain sufficient.[897]

Mr. DeCooman testified that the fact the dams are embedded in public waterways and local ecosystems means that transferring them to a non-rate-regulated owner increases the State's liability risk due to the dams' significant maintenance needs and the potential for community and environmental harm if they are not properly maintained.[898] He explained that selling the dams would end the Commission's oversight of capital and O&M spending at the dams, although the dams would continue to be regulated and licensed by FERC just as they are today. He explained that FERC can take punitive actions up to and including revocation of an operating license, but such revocation does not mean that the dam owner will address violations or bring the dam into compliance

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[894] 3 Tr 180.
[895] 3 Tr 181.
[896] 3 Tr 182.
[897] 3 Tr 180.
[898] 3 Tr 850.

with safety standards.[899] Mr. DeCooman pointed to the Edenville Dam failure near Midland as an example where a FERC-regulated but non-utility owned dam failed after FERC issued numerous violations over the course of eight years before finally revoking the facility's license.[900]

Mr. Trumble explained that Consumers Energy can safely maintain and operate dams because, as a regulated utility, it can recover necessary dam safety and maintenance costs through MPSC-approved electric rates; however, as a non-utility, Confluence's sole source of revenue would be the PPA. He asserted that a decrease in revenue or an increase in costs could undermine Confluence's ability to maintain dam safety standards.[901] Mr. Trumble cited several recent Michigan examples where insufficient hydropower revenue led to neglect, safety failures, and significant risk to public health, property, and natural resources.[902]

Mr. Trumble testified that FERC oversees dam safety for all hydropower-licensed dams, but the State of Michigan regulates only non-hydropower dams. He explained that FERC has several enforcement tools including revoking the license to operate or termination of the license under a theory of implied surrender; both measures result in the transfer of regulatory authority from FERC to the State.[903] He added that in his experience, "FERC struggle[s] to compel compliance by licensees on dam safety matters utilizing regulatory tools they have at their disposal."[904] He stated that licensees often cite

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[899] 3 Tr 851.
[900] 3 Tr 851-852.
[901] 3 Tr 428-429.
[902] 3 Tr 430.
[903] 3 Tr 433.
[904] 3 Tr 430.

financial issues as the reason for their failure to comply with safety regulations; further, he testified that FERC typically declines to levy civil penalties or take other punitive actions because it fears that fines would take revenue away from licensees that are already struggling financially.[905] He explained that "[i]n practice, this means that if licensees do not voluntarily comply with directives from FERC, then FERC has demonstrated that they have little recourse other than eventually terminating the license and turning regulatory authority over to the State, often after long periods of non-compliance."[906] When license revocation or surrender occurs, he stated that "the State is faced with the challenge of trying to bring dangerous dams into compliance with safety standards with owners who have a long track record of non-compliance and no revenue from hydropower generation to put towards improving the condition of the dam."[907]

Mr. Trumble provided examples of recent Michigan cases wherein FERC licenses were revoked or taken under the theory of implied surrender. He explained that for the Au Train dam, the owner lost control of the parcel of land upon which the dam sits causing FERC to revoke the license through implied surrender; this required the State to work with the owner to find a solution to numerous safety issues while the owner no longer has funding from hydropower revenue.[908] In the case of the Edenville dam, he explained that FERC revoked the owner's license after many years of non-compliance, and the dam failed 20 months later causing a mass evacuation, damage to property, and damages over $200 million.[909] Mr. Trumble testified that EGLE offered several recommendations

[905] 3 Tr 431, 432 (citing Exhibit DNR-29).
[906] 3 Tr 432.
[907] 3 Tr 435.
[908] 3 Tr 436-437.
[909] 3 Tr 437-438.

to improve safety regulation through public comments in response to FERC's recent proposed rulemaking; however, FERC has not implemented any of EGLE's suggested changes to the best of his knowledge.[910]

Mr. Trumble explained that dam inspection reports include assessment of Potential Failure Modes Analyses (PFMAs), with numeric values from I through IV; he explained that Category I was the most concerning while category IV was of the least concern. [redacted][911] [redacted][912]

Ms. Mistak stated that while FERC holds the authority to regulate safety for hydroelectric dams, in her experience "dam safety mandates are rarely enforced by FERC."[913] She explained that FERC has several enforcement mechanisms: voluntary and implied surrender of a license, license revocation, civil penalties, injunctive relief in federal court, and referral to the Justice Department for criminal prosecution.[914] However, she testified that her experience has shown that FERC is slow to act and declines to take meaningful action aside from license revocation or enacting an implied surrender of

[910] 3 Tr 439.
[911] Conf 3 Tr 1114-1115.
[912] Conf 3 Tr 1116.
[913] 3 Tr 400.
[914] 3 Tr 400.

license; further, she stated that those actions merely shift the burden of regulating safety onto the State of Michigan.[915]

Ms. Mistak stated that recent Michigan cases, including the Edenville and Au Train dams, demonstrated long-term noncompliance with FERC dam safety requirements despite repeated warnings. In both cases, FERC allowed safety problems to persist for many years or even decades before taking meaningful action, and both situations ultimately resulted in significant failures or transfers of responsibility to the State.[916] She concluded that these examples demonstrate FERC's inability to effectively enforce dam safety standards when an owner is unwilling to comply.[917]

Ms. Mistak emphasized that all but one of the Company's dams are classified as "high hazard" meaning that failure or improper operation would not only cause loss of life, but also that they require higher investment costs for repair and dam safety requirements.[918] However, she explained that as of 2021, FERC did not include license requirements to address whether a licensee could afford ongoing O&M expenses or required environmental and safety measures.[919] She added that in 2021-2022, FERC invited comments on what changes to make to licensing practices to address the financial strength of licensees, and the DNR provided comments, but Ms. Mistak found "no measurable changes."[920] Ms. Mistak asserted that after conferring with FERC staff, their current practice is to use a "Reservation of Authority to Require Financial Assurance

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[915] 3 Tr 400.
[916] 3 Tr 400-402.
[917] 3 Tr 402.
[918] 3 Tr 402.
[919] 3 Tr 403.
[920] 3 Tr 404.

Measures" as a standard license article in the licensing process. However, she testified that she is not aware of this measure being used at any dam to address non-compliance with safety measures.[921] Critically, she testified that:

> As of today, FERC does not require license transfer applicants to demonstrate in any meaningful way that the potential transferee has the long-term financial means to maintain the project in compliance with FERC's safety and environmental requirements. I am not aware of FERC denying requests to transfer hydropower projects. I am also not aware of instances where FERC has placed meaningful financial assurance requirements on existing or transferred hydropower project licensees.[922]

Ms. Mistak further stated that while the transfer of a hydro power license generally requires FERC approval, the transfer process "appears to be an administrative review process; transfer applications are not heavily scrutinized, and transfer requests are rarely (if ever) denied."[923]

In rebuttal for Consumers, Mr. Monroe stated that, "the Company disagrees that there will be any significant reduction to regulatory oversight of the dams with the license transfer."[924] He reiterated that FERC has full authority under the Federal Power Act to regulate the safety, operations, and environmental compliance of the 13 dams and, as part of any license transfer, conducts a thorough review to ensure the new owner is capable of safely operating them.[925] Mr. Monroe stated the FERC licenses for each facility will be transferred to Confluence, and Confluence will be subject to the exact same safety regulations as Consumers.[926] FERC will review Confluence's technical and financial

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[921] 3 Tr 404.
[922] 3 Tr 404-405.
[923] 3 Tr 405.
[924] 3 Tr 182.4.
[925] 3 Tr 182.4.
[926] 3 Tr 182.5.

capability to safely operate and maintain the dams as part of the license transfer, including an evaluation of its existing dam-safety program. He asserted that, because FERC retains full dam-safety oversight, the transfer will not negatively affect safety, contrary to DNR witness Mistak's suggestions.[927]

b. Briefing

In briefing, Consumers asserts that that DNR witness Mistak's claims about weak FERC enforcement are inaccurate because FERC has full authority and responsibility over dam safety regulations and license transfers, and that authority remains unchanged by the sale.[928] The Company emphasize that each of the 13 dams is governed by detailed FERC license requirements covering safety, operations, land management, and recreation, and that FERC, not the MPSC, provides the safety oversight. Consumers argues that as part of the transfer, FERC will thoroughly evaluate Confluence's technical and financial ability to operate the dams safely, ensuring no reduction in regulatory oversight.[929]

In its brief, Staff states that the proposed transaction would remove the considerable oversight that the MPSC currently has into the operation of the dams through its determination of reasonable and prudent costs to be recovered in rates.[930] Staff also notes that the proposed transaction would eliminate the Commission's jurisdiction and oversight over any future sale of the hydro fleet by Confluence to another entity.[931] As such, Staff contends that there would be an even greater reliance on FERC

[927] 3 Tr 182.5-182.6
[928] Consumers brief, 51.
[929] Consumers brief, 52.
[930] Staff brief, 17, 43.
[931] Staff brief, 18.

oversight to ensure the long-term safety of the Hydro fleet.[932] However, Staff argues that the Company provided little to refute or address the concerns about FERC's apparently lenient oversight raised by other parties; instead, Staff asserts that the Company primarily focused on trying to draw distinctions between the proposed transaction and the Edenville Dam and its ownership structure when it failed.[933] But Staff asserts that the Company ultimately failed to address the fundamental concern of the parties that FERC oversight alone fails to adequately address dam safety concerns.[934]

In her brief, the Attorney General noted that the DNR is skeptical about FERC oversight based upon other matters that it has been involved in; however, the Attorney General opines that this case is different from cases involving small operators previously encountered by the DNR. She notes that in addition to funding from parent company HSE and environmental liability insurance, there is a 30-year PPA with above market rates. The Attorney General further states that her various recommended conditions for the transaction (discussed in Section E of this PFD, *infra*) will strengthen Confluence's ability to safely operate the dams.[935]

The DNR states that the proposed transaction would remove the dams from the Commission's oversight because the Commission would no longer be able to weigh in on spending decisions related to operations and maintenance. This would be a substantial loss of existing public oversight per the DNR.[936] The DNR continues that FERC is not a reliable dam safety enforcement agency because there are examples of private dam

[932] Staff brief, 18.
[933] Staff brief, 45.
[934] Staff brief, 46.
[935] Attorney General brief, 57.
[936] DNR brief, 16.

owners flaunting safety directives for decades without FERC taking meaningful enforcement actions.[937] The DNR highlighted situations in Michigan involving the Au Train and Edenville dams as examples.[938] [redacted][939]

The DNR argues that keeping the dams under Commission oversight protects the public because Consumers can reliably invest in required safety upgrades, whereas transferring them to Confluence would remove that oversight and risk repeating past failures where private owners delayed critical dam-safety improvements.[940]

MHRC's briefing argues that Consumers is incorrect to argue that the FERC license review process will ensure that Confluence has the technical expertise and financial capability to safely operate the facilities. While Mr. Monroe provided testimony to that effect on behalf of Consumers, MHRC notes that Mr. Monroe conceded that he has never worked on a FERC license transfer before the current case and has not reviewed prior FERC transfer decisions.[941]

MHRC contends that Section 8 of the Federal Power Act,[942] which governs license transfers, does not articulate a standard for approving transfer applications and that FERC's body of caselaw indicates that license transfer proceedings are a "limited inquiry

[937] DNR brief, 16.
[938] DNR brief, 17-18.
[939] DNR brief, 20.
[940] DNR brief, 20-21.
[941] MHRC brief, 51 (citing 3 Tr 187).
[942] MHRC cites 16 U.S.C. § 801; see also 18 C.F.R. §§ 9.1–9.3.

of the ability of the transferee to carry out its responsibilities under the license."[943] MHRC asserts that its review of FERC decisions indicate that FERC does not carefully scrutinize a transferee's financial resources or capabilities, and has even declined to consider whether a transferee had the ability to pay if upgrades to a dam were needed in the future.[944] MHRC asserts that FERC has even approved a transfer where it did not expect the project to be profitable to operate but nevertheless approved the transfer because its policy was to allow the transferee and its lenders and investors to make their own independent judgment.[945] MHRC asserts that FERC approves transfers with little discussion or scrutiny and points to FERC's approved transfers of the Edenville and Secord dams in 2004,[946] when it did so with minimal discussion and acknowledgement that the transferee had no compliance history.[947]

MHRC repeats and emphasizes numerous points from the testimony of Staff witness DeCooman and DNR witnesses Trumble and Mistak regarding the deficiencies of FERC's regulatory regime when it comes to hydroelectric dams owned by private entities.[948] MHRC also repeats the cautionary tales of the Edenville and Au Train tragedies that occurred recently in Michigan.[949]

Confluence's briefing criticizes the DNR for including testimony about the alleged inadequacy of FERC's regulatory oversight, and Confluence further asserts that FERC

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[943] MHRC brief, 51 (quoting *Alcoa Power Generating Inc., Cube Yadkin Generation LLC*, 157 FERC ¶ 62,188 at p. 4 (2016)).
[944] MHRC brief, 52 (citing *Fraser Papers Inc, Flambeau Hydro, LLC*, 89 FERC ¶ 61,286, 61,897 (1999)).
[945] MHRC brief, 52 (citing *Fraser Papers Inc*, 89 FERC ¶ 61,286, 61,897 (1999)).
[946] Recall that these are the dams that failed in Midland county in 2020.
[947] MHRC brief, 52 (citing 107 FERC ¶ 62,266 at 2–3 (2004)).
[948] MHRC brief, 53, 54.
[949] MHRC brief, 55-56.

approved its Section 203 Application, and that the Commission should not duplicate FERC's own regulatory analysis in conducting its statutory analysis.[950]

In its reply, the Company asserts that the Commission "should not assume, as DNR and MHRC urge, that FERC will fail to properly and meaningfully exercise the regulatory authority it possesses."[951] Further, Consumers asserts that "[i]t is unreasonable to assume that FERC itself has not responded to critical events like the Edenville dam failure by adjusting its approach to dam regulation in an effort to prevent a recurrence of that particular situation."[952] The Company suggests that this case is not the proper forum for redesigning federal hydroelectric regulation, and the Commission cannot assume oversight powers it lacks merely because some parties believe FERC should do more.[953]

In its reply, the DNR rejects the argument made in Confluence's briefing that the Commission need not duplicate FERC's analysis regarding public interest because FERC already approved the Consumers' Section 203 Application on February 18, 2026. The DNR explains that FERC's decision was made under a different statutory framework and on a relatively minor issue, and it was not an approval of the request to transfer FERC licenses, which is a process that is still ongoing.[954] Further, even the FERC license transfer process does not alleviate the Commission's responsibility under Michigan law to determine if the proposed transaction is in the public interest.[955] The DNR explains that FERC's analysis may have some points of overlap but can also be wholly different with

[950] Confluence brief, 4.
[951] Consumers brief, 10.
[952] Consumers reply, 10.
[953] Consumers reply, 10.
[954] DNR reply, 2.
[955] DNR reply, 2-3.

the DNR pointing to concerns like public access to recreational lands, the perils of private equity ownership, and potential liability for taxpayers as issues not addressed in FERC's order.[956]

The DNR rejects Confluence's characterization of concerns about FERC's safety oversight as "secondary public concerns" because it is integral to the Commission's duty to consider whether the transaction is inconsistent with public policy and interest.[957] The DNR states that FERC would be the sole regulator after the sale, and there is significant testimony and evidence regarding FERC's inadequate oversight of private dams.[958]

The DNR argues that Consumers misrepresents Ms. Mistak's testimony, which focused not on existing dam-safety license conditions but on FERC's lack of requirements ensuring that transferees have long-term financial capacity to safely operate the dams.[959] Ms. Mistak's testimony, supported by her sponsored exhibits, shows that FERC recognized but never fixed this gap and does not meaningfully vet financial capability in license transfer proceedings.[960] The DNR contends that Consumers labels Ms. Mistak's statements about FERC's review process "inaccurate" but offers no evidence to rebut them.

In its reply, MHRC argues that the Commission and public cannot rely on "existing regulatory and contractual guardrails" as Consumers urges because the record demonstrates that FERC will not provide sufficient protection.[961] MHRC repeats with

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[956] DNR reply, 3 (citing 194 FERC ¶ 62,084 (February 18, 2026).
[957] DNR reply, 5.
[958] DNR reply, 5-6.
[959] DNR reply, 9-10.
[960] DNR reply, 10-11.
[961] MHRC reply, 12.

approval many of the points relating to FERC oversight stated by the DNR. MHRC also argues that Consumers wrongly minimizes the Commission's important role in ensuring dam safety and guiding future decommissioning, contrary to the record and Staff's own statements. MHRC further asserts that without this oversight, Confluence would be incentivized to cut safety-related spending to increase profits, creating significant public-interest risks.[962]

In its reply, Confluence challenges intervenors' arguments that it is against public policy or interest for dams to be solely regulated by FERC. Confluence argues that it is in fact the public policy of the State of Michigan, written into law, that when a dam is regulated by FERC it will not be additionally regulated by the state.[963] Thus, far from being inconsistent with public policy and interest, Confluence asserts that such an outcome is aligned with state law.

c. Analysis

As an initial matter, a significant amount of the testimony and briefing in this section addressed Confluence's safety record and technical capability, as well as the Commission's loss of jurisdiction if the dams are sold to an entity that is not a rate-regulated utility. These matters are analyzed in Sections (C)(1)(c)(*i*), (*ii*) and (*iv*) of this PFD, *supra*, and will not be fully repeated here. This analysis primarily examines FERC's role as a safety regulator and how its regulatory paradigm shapes outcomes when dams are owned by private entities like Confluence.

[962] MHRC reply, 13-14.
[963] Confluence reply, 4 (citing MCL 324.31506(2)).

All parties agree that Confluence will be subject to the same FERC licensing requirements as Consumers and that FERC will continue to regulate safety measures both before and after the proposed sale.

Nevertheless, by focusing on the fact that FERC's safety oversight would remain continuous, the Company neglected to address the central concern raised by Staff and other intervenors like MHRC and DNR. The concern centers less on FERC's continuation of safety regulation and more on whether FERC's regulatory paradigm, and the enforcement tools within it, would operate as effectively when the owner is a private company rather than a rate-regulated utility. As intervenors have noted, Consumers can recover safety-related costs through rate increases, and it has a longstanding presence and reputation in the local communities that make noncompliance with FERC's safety requirements highly unlikely. Newly formed private entities, by contrast, lack these financial protections and incentives, and therefore present a materially different risk profile.

Unrebutted testimony from Staff and DNR witnesses suggest that, in some cases involving private dam owners, FERC's enforcement practices have permitted safety-related deficiencies to continue for very significant lengths of time.[964] The record indicates that FERC's lenient enforcement posture may be informed by a view that civil penalties could be counterproductive when owners are already experiencing financial

[964] See 3 Tr 400-402; 3 Tr 436-437; 3 Tr 851-852. See also Exhibit DNR-29. This exhibit is a 2020 letter from then-FERC Chair Neil Chatterjee to Representative Frank Pallone, Chair of the House Committee on Energy and Commerce, responding to the Committee's inquiry into FERC's oversight of the Edenville Dam. In the letter, Chair Chatterjee acknowledged that FERC first raised safety concerns about the dam in 1999, that those concerns persisted through multiple changes in ownership, and that FERC ultimately only revoked the Edenville project's license in 2018.

distress.[965] However, this pragmatic enforcement paradigm can allow problems to persist and grow while FERC attempts to coax owners into compliance without resorting to punitive measures.[966] When conditions finally become untenable, FERC's ultimate decision to revoke a hydropower license merely shifts the regulatory burden to the State while leaving the dam owner in an even worse position due to the loss of revenue from generation.[967] Staff and DNR witnesses pointed to the Edenville and Au Train dam incidents in Michigan as illustrative examples of this regulatory paradigm in practice.[968] These circumstances highlight that the present regulatory framework, as administered by FERC in cases involving private ownership, may not dependably produce the safety outcomes it seeks to achieve.

As applied to the proposed transaction and Confluence, this regulatory paradigm raises significant concerns. As discussed in Section (C)(1)(c)(*iii*) of this PFD, *supra*, there are meaningful concerns about Confluence's financial ability to safely relicense and maintain the dams over the long-term. [redacted]

[965] See 3 Tr 431. See also Exhibit DNR-29, p. 1 (stating that FERC chose not to impose penalties on Boyce Hydro given its indication that it lacked sufficient funding to undertake repair projects).
[966] See Exhibit DNR-29, p. 1-2 (describing the timeframe from 1999-2018 during which FERC knew the Edenville dam had safety issues). See also the FERC Order Revoking License pertaining to the Edenville Dam, Exhibit DNR-31, p. 2 (stating that FERC had attempted to correct noncompliance issues since Boyce Hydro took over ownership of the dam in 2004).
[967] See 3 Tr 400; 3 Tr 434-435.
[968] See, e.g., 3 Tr 400-402; 3 Tr 430; 3 Tr 851-852.

[redacted][969] Additionally, as intervenors note, Confluence's corporate structure, with each dam being owned by a separate LLC, could allow it to choose to delay or forego safety upgrades or maintenance for a significant time if doing so was in its financial interest. In such a scenario, there may be little that FERC would or could do to meaningfully compel compliance given its apparent reticence to act against private entities that cite insufficient funding as a reason for delaying repairs or upgrades.

The Attorney General, while acknowledging the DNR's skepticism rooted in other Michigan dam-safety matters, maintains that this case is materially different from the small-operator situations the DNR has previously encountered due to HSE's involvement. Although that distinction is accurate to a point, Confluence's corporate structure means that its financial resources are not coextensive with those of HSE. [redacted][970] and presumably FERC could not direct enforcement action against HSE because it does not directly own the dams. Accordingly, while this matter is distinguishable from the "small operator" situations previously faced by the DNR, it still involves structural and financial limitations that meaningfully temper the significance of HSE's involvement.

Additionally, even if Confluence is viewed as a financially stable and safety-oriented owner, there is no guarantee that Confluence will continue to own the dams for the long term. As discussed in Section C(1)(c)(*iv*), *supra*, Confluence could sell the dams

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[969] See generally the discussion in Section (C)(1)(c)(*iii*) of this PFD, *supra*.
[970] The Attorney General's proposed financial guarantees related to this point are addressed in Section E of this PFD, *infra*.

to new owner(s). In that scenario, the Commission would have no say in approving any future sale of the dams. While FERC would necessarily be involved in approving the license transfers in any future sale, the unrebutted testimony in this case is that the transfer process is largely administrative in nature, transfers are rarely if ever denied, and the process does not impose a particularly deep scrutiny of a new buyer's financial capabilities.[971] Notably, in this case, Consumers has included its joint application with Confluence to FERC for the transfer of the licenses as part of its overall filing. In their joint application to FERC, Consumers and Confluence cite FERC precedent for the proposition that PPAs are sufficient to demonstrate financial qualifications to own hydroelectric facilities, and the Company and Confluence principally cite the proposed PPA as proof of Confluence's financial qualifications.[972] Accordingly, the financial review that may occur as part of any future FERC license transfer review may simply be confirmation of an associated PPA.

Finally, Confluence argues that the Commission should not duplicate FERC's own regulatory analysis in conducting its statutory analysis.[973] This PFD rejects that proposition for the reasons stated in the DNR's reply brief.[974] The Commission has an independent obligation under state law to examine, among other factors, those listed in MCL 460.6q(7). While FERC's analysis may touch upon some similar considerations, the

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[971] See 3 Tr 404-405; see also MHRC brief 51-52 (citing FERC precedent related to the license transfer process).
[972] October 31, 2025, Application in Case No. U-21985, Attachment C, "Joint Application for Approval of Transfer of Licenses," pp. 17-19.
[973] Confluence brief, 4. Notably, Confluence's argument was primarily made in relation to a FERC finding about public interest and not necessarily about safety, but this issue is included in this section of the PFD given its focus on FERC's regulatory role.
[974] See DNR reply, 2-4.

Commission must make its own findings based upon the evidentiary record before it. Notably, this evidentiary record may differ significantly in scope and substance from the record before FERC and may encompass a far broader range of considerations.

In sum, although FERC's safety oversight will remain in place after the proposed sale, the record shows that FERC's existing regulatory paradigm has demonstrated limitations when applied to private owners, particularly those with constrained or uncertain financial capacity.

3. Conclusion Regarding Safe Service Under MCL 460.6q(7)(b)

This PFD concludes that there is no dispute that the proposed transaction does not jeopardize the provision of reliable or adequate energy service; however, this PFD concludes that the proposed transaction would have an adverse impact on the safe provision of energy service.

More specifically, the sale would have the effect of making energy service less safe. The totality of the circumstances discussed in Sections C(1) and (2) of this PFD, *supra*, suggests that the specific nature of this proposed transaction materially increases safety risks because of serious concerns about Confluence's financial capabilities, how those concerns may influence its ability or incentives to invest in maintenance and safety, and the limits of the current regulatory framework to redress those specific risks.

To be clear, this conclusion does not rest on a generalized skepticism toward private dam ownership, the use of LLCs, or an assumption that FERC will necessarily fail to enforce safety requirements. Rather, it reflects an assessment of how the specific aspects of this proposed transaction are likely to operate in practice, particularly how

Confluence's financial situation and incentives may shape its capabilities and decisions regarding maintenance and safety investments.

D. Consistency with Public Policy and Public Interest under MCL 460.6q(7)(e)

The parties raise significant disagreements over the proposed transaction's effects on local communities and its potential environmental consequences. These concerns implicate public policy and the public interest, and they are each discussed below. Notably, some parties also discussed concerns about Confluence and dam safety as a public interest or public policy matter, but this PFD primarily categorized those concerns under MCL 460.6q(7)(b) and addressed them in Section C of this PFD's discussion section, *supra*.

1. Effect on Local Communities

a. Testimony

Ms. Thompkins testified regarding the Company's community engagement efforts relating to the potential sale of the dams, and she explained that the Company hired the research and consulting firm Public Sector Consultants (PSC) to help develop its engagement plan.[975] She testified that the Company held several community meetings regarding the dams from 2022 through 2024, with the final report that summarizes community input and feedback contained in Exhibit A-25.[976] She explained that community meetings were divided into seven locality-based "prosperity groups," and the Company held several meetings with each group.[977] Ms. Thompkins also stated that Consumers hired PSC to complete an economic contribution study for each dam as well

[975] 3 Tr 255.
[976] 3 Tr 256 (referencing Exhibit A-25).
[977] 3 Tr 259.

as a statewide economic contribution analysis, which are contained in Exhibits A-12 through A-24.[978] Ms. Thompkins summarized the results of each individual study, which estimated economic effects on local communities within one year of partial or full removal of each dam. In general, the estimated effects were loss of tourism and jobs related to the dams and their impoundments as well as a reduction in local property values with a corresponding drop in tax revenue for local communities.[979]

Mr. Westgate, the Township Supervisor of Big Prairie Township, explained the benefits the Hardy and Croton Dams provide.[980] According to Mr. Westgate, the loss of Hardy Pond would result in a sharp decline in visitor spending and seasonal business activity that local establishments rely on, as well as the loss of lakefront property that would result in declining property values and a drop in taxable value and township revenue.[981] Mr. Westgate further asserted that the exposed lakebed would create mudflats and large amounts of sediment could shift downstream affecting fish and wildlife. He also noted that the dam served as a road crossing, the elimination of which would lengthen travel times, complicate emergency response, and reduce connectivity between parts of the township.[982] Mr. Westgate testified that the Hardy and Croton Dam impoundments resulted in a recreation-driven economy with recreational activity shaping the Township's identity and creating a regional destination that benefits both residents and visitors.[983]

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[978] 3 Tr 256-257 (referencing Exhibits A-12 through A-24).
[979] See generally 3 Tr 260-268 (citing Exhibits A-12 through A-24).
[980] 3 Tr 788-789.
[981] 3 Tr 789.
[982] 3 Tr 789.
[983] 3 Tr 790.

Mr. Westgate testified that the proposed sale of the Hardy and Croton Dams was consistent with public interest because most residents want to keep the impoundments and dams.[984] He noted that 175 parcels directly border the impoundments and river backwaters created by the two dams within Big Prairie Township.[985] According to Mr. Westgate, PSC's analysis failed to capture the long-term impacts of declining seasonal populations, the strain on emergency response and transportation from losing the Hardy crossing, and the ongoing fiscal pressure on township services caused by the loss of high-value waterfront property.[986] He further noted that the PSC studies did not address the impact on the Dragon Trail, which is a 47-mile non-motorized hiking and mountain biking trail that loops around Hardy Pond, circling the reservoir and drawing visitors from across Michigan.[987] Hardy Pond is the central feature of the trail and its economic draw would likely diminish with the loss of the dams.[988] Mr. Westgate stated that the local community invested $3.5 million into Dragon Trail, with the township's direct contribution being $50,000.[989]

Ms. Soodek, President of the Lake Allegan Association, Inc. (LAA), and a homeowner in the Lake Allegan community, testified on behalf of LAA, which is an association with 390 members devoted to the care, improvement, and conservation of Lake Allegan.[990] According to Ms. Soodek, Lake Allegan is a 1,500+ acre lake formed by an impoundment of the Kalamazoo River by the Calkins Bridge Dam, owned by

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[984] 3 Tr 791.
[985] 3 Tr 791.
[986] 3 Tr 791.
[987] 3 Tr 792.
[988] 3 Tr 792-793.
[989] 3 Tr 793.
[990] 3 Tr 774-775.

Consumers Energy and an asset in the proposed sale.[991] Ms. Soodek expressed that visitors and residents use the lake for all forms of water-based recreation, and Lake Allegan has become a sanctuary for a diverse population of wildlife including 97 bird species such as eagles, herons, kingfishers, sea gulls, ducks and geese, as well as two species of endangered mussels, one endangered butterfly, turtles, bluegill, catfish, bullhead, and northern pike.[992]

According to Ms. Soodek, removing the Calkins Bridge Dam would eliminate Lake Allegan, reduce home values and tax revenue, and eliminate lake recreation negatively affecting businesses sustained by the lake and lake community.[993] She further asserted that Lake Allegan plays an important role with respect to surrounding groundwater wells that the community depends upon for potable water, referencing a report from Hydrosimulatics Inc., which concluded that the loss of the Calkins Bridge Dam may cause water levels in lakeside wells to decline by as much as 15 feet.[994] Ms. Soodek stated that LAA supports the proposed sale of the Calkins Bridge Dam to Confluence because Confluence has asserted that it does not intend to decommission any of the dams, which ensured the long-term future of Lake Allegan and the Lake Allegan community.[995]

Mr. Heinzman, the Supervisor of Croton Township, expressed concern for the continuation of Croton and Hardy Ponds, which provide recreational opportunities to Croton Township the loss of which would harm its economy, tax base, long-term

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[991] 3 Tr 775.
[992] 3 Tr 776.
[993] 3 Tr 777.
[994] 3 Tr 778; see also Exhibit LAA-1.
[995] 3 Tr 778-779.

sustainability, property values, and ability to maintain essential public services.[996] Mr. Heinzman asserted that removal of the dams and their impoundments would create substantial and long-lasting negative effects on residents, visitors, and the broader region.[997]

Mr. Heinzman contended that the economic activity generated by the impoundment directly supported local businesses and indirectly supported public safety, infrastructure, and other Township services, as well as enhancing scenic value and driving higher property values for hundreds of parcels along the waterfront, estimated to be over $53 million in taxable value.[998] As a result, Mr. Heinzman asserted that the proposed sale would be consistent with public interest, assuring the continued viability of this lakefront community, whereas the potential removal of the dam and impoundment would be inconsistent with the public interest because it would eliminate Croton Pond entirely, destroying a major recreational asset and significantly reducing the Township's taxable value.[999] He further asserted that the economic impact studies prepared by PSC do not fully capture the widespread and long-term economic losses that dam removal would cause.[1000]

According to Mr. Heinzman, removal of Croton Dam would fundamentally change the character of Croton Township by reducing property values for waterfront parcels, shrinking the tax base, limiting the ability to fund essential services, harming local businesses dependent on lake-based recreation, reducing tourism and recreational

[996] 3 Tr 783.
[997] 3 Tr 782-783.
[998] 3 Tr 783.
[999] 3 Tr 784.
[1000] 3 Tr 784.

activity, and decreasing the Township's attractiveness for residents, visitors, and future investment.[1001] Finally, he noted that 612 parcels border or rely on the Croton Pond impoundment, directly benefiting from waterfront access, scenic views, recreational opportunities; all of which would be lost with the removal of the dam.[1002]

Mr. Scuderi addressed the PSC reports and testified that existing research on dam removal in Michigan relies largely on nonmarket valuation and economic impact methods, and that this literature consistently shows little evidence of property-value harm from dam removal, with several studies finding no price penalties and, in some cases, higher home values afterward.[1003] He explained that the broader academic record also finds that impounded rivers offer fewer recreational benefits than free-flowing rivers and that dam removal generally supports recreation and tourism without harming county-level economies.[1004] He emphasized that studies consistently show minimal negative economic effects from decommissioning and restoration activities and noted that dam removal may produce additional uncounted benefits through improved recreational and ecosystem services.[1005] Based on these findings, he concluded that dam removal typically results in positive recreational, ecological, and economic outcomes rather than the losses sometimes assumed.[1006]

Mr. Scuderi took issue with several aspects of PSC's economic analysis and estimates. Mr. Scuderi testified that the PSC's use of cellphone-based visitation estimates

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[1001] 3 Tr 785.
[1002] 3 Tr 785.
[1003] 3 Tr 512-514.
[1004] 3 Tr 516-518.
[1005] 3 Tr 519-522.
[1006] 3 Tr 522.

was unreliable because the method risked miscounting pass-through travelers, employees, and nearby residents, was inconsistently applied across dam sites, and was not validated against traditional visitation data.[1007] He further contended that PSC's approaches to estimating both non-angler and angler visitation were unclear and frequently misapplied, relying on surveys that did not actually reflect impoundment-based recreation and in some cases referencing surveys that could not be located.[1008] He explained that the expenditure profiles PSC used were insufficiently documented, relied on averaging day-trip and overnight-trip spending despite their large cost differences, and likely inflated visitor spending estimates. He also argued that PSC's property-value benefit transfer analysis lacked methodological transparency, used unsupported percentage adjustments, failed to meet basic validity requirements, and omitted studies with conflicting findings such that it resulted in unreliable transfer values.[1009]

Mr. Scuderi testified that PSC's property-value analysis used an unclear and insufficiently justified benefit-transfer approach, including an unsupported 37 percent premium and a formula whose basis was not adequately explained.[1010] He further asserted that PSC failed to follow best practices when conducting a benefit transfer analysis, did not calibrate for differences between study and policy sites, and omitted relevant contrary studies, resulting in biased and unreliable property-value estimates.[1011]

[1007] 3 Tr 524-525.
[1008] 3 Tr 525-528.
[1009] 3 Tr 529-530.
[1010] 3 Tr 530-531.
[1011] 3 Tr 531-533.

In addition, he criticized PSC's "hedonic pricing analysis"[1012] for relying on only lot size and dimensions as control variables for physical property differences, using a single year of data, and providing no explanation of regression methods, which made the results highly questionable.[1013] Mr. Scuderi testified that PSC's overall modeling depended on unrealistic assumptions, including limiting economic impacts to only the first year after dam removal, ignoring the presence of nearby recreational substitutes, and excluding fisheries-related benefits, all of which he believed distorted the study's conclusions.[1014] Finally, he asserted that PSC failed to provide sensitivity analyses and withheld the results of its landowner survey, leaving key public-perspective information unreported and further weakening the credibility of its findings.[1015]

Mr. Scuderi concluded that the PSC reports suffer from limited transparency, methodological weaknesses, and unrealistic assumptions that undermine the reliability of its economic impact findings. He believed these deficiencies caused PSC to overstate economic losses and that it failed to capture the full, multi-year effects of dam removal and river restoration documented in the broader literature.[1016] As a result, he advised that the Commission should not rely on PSC's conclusions when making policy or ratemaking decisions.

[1012] From the context, Mr. Scuderi explained that a hedonic analysis in real estate is a statistical method used to estimate how individual property characteristics contribute to a property's overall market value by comparing otherwise similar properties and attempting to isolate the effect of specific features or characteristics such as proximity to a body of water. See generally 3 Tr 535.
[1013] 3 Tr 536.
[1014] 3 Tr 538-540.
[1015] 3 Tr 541-542.
[1016] See generally 3 Tr 542-545.

This PFD also notes that, while placed in the section of this PFD addressing environmental concerns, the testimony of MHRC witnesses Nelkie, Greenberg, Sendek, Buhr, Pitser, Garlock, and Feenstra also touched upon general concerns about the effect the dams have on local communities.

Company witness Richard Blumenstock testified in rebuttal that he was thankful for Mr. Heinzman, Mr. Westgate, and Ms. Soodeck's support of the Company's decision to sell the river hydro facilities. He asserted that their testimonies brought to life the real impact that will occur should the river hydro facilities be decommissioned and was supported by the studies performed by PSC.[1017]

In rebuttal for the Company, witness Branneman responded to criticism of PSC's studies leveled by Mr. Scuderi stating that:

> 1. The PSC assessment and assumptions are reasonable given the research question and agreed upon parameters of the work.
> 2. The data collection and analyses were appropriate and transparent and reasonably assumed limited availability of nearby substitute recreational opportunities at the local level.
> 3. The time period of one year after dam removal to evaluate economic impacts was the most prudent choice to ensure the communities could understand what the impacts of dam removal might be and allows for higher confidence in the results as it avoids over-speculation of future events. Long-term projections often rely on highly speculative assumptions about how new markets might develop, can be skewed by outside factors unrelated to dam removal, and introduces excessive "noise."
> 4. PSC methods for property value analyses, both the site-specific benefit transfer and the hedonic analysis, were appropriate.[1018]

Ms. Branneman then asserted that the issues raised by Mr. Scuderi were "immaterial to the overall findings of the reports, which conclude that the hydro facilities and their

[1017] 3 Tr 92.
[1018] 3 Tr 201.

impoundments contribute in a significant way to the local economy, and that their removal would have a substantial negative economic impact in the year following their removal."[1019]

Ms. Branneman explained and defended the modeling methods used for the PSC studies' economic contribution analysis (economic contribution of recreational activity and hedonic analysis for home pricing) and the methods used to estimate economic impact (economic impact of recreational activity and benefit transfer for home values).[1020]

Ms. Branneman responded to Mr. Scuderi's specific concerns about the use of cell phone data by explaining that PSC relied on multiple data sources, affirming the reliability of the Placer.ai derived cell-mapping data used to assess site visitation, and suggesting that Mr. Scuderi's doubts stemmed from unfamiliarity with modern technological tools appropriate for this type of analysis.[1021] She explained that creel reports were the most reliable and appropriate source for measuring angler visitation, and she asserted that Mr. Scuderi's concerns about specific data nuances were statistically insignificant to the study's overall economic conclusions.[1022] Ms. Branneman rejected Mr. Scuderi's concerns about site-specific recreational adjustments explaining that PSC reasonably developed site-specific weighted average adjustments to recreational activity assumptions by tailoring factors to each activity's dependence on impoundment conditions while applying those factors uniformly across dam sites.[1023]

[1019] 3 Tr 201.
[1020] 3 Tr 202-203; 209-212.
[1021] 3 Tr 203-205.
[1022] 3 Tr 205-207.
[1023] 3 Tr 207-208.

Ms. Branneman responded to concerns about expenditure estimates by stating that PSC appropriately used weighted average expenditure data from the White (2017) report, including all spending categories, to ensure accurate, non-overestimated recreational spending estimates for non-angler visitor parties. In addressing Mr. Scuderi's concerns regarding PSC's assumptions, Ms. Branneman asserted that the assumptions adopted for these studies and the specific questions being answered were reasonable and defensible. According to Ms. Branneman, PSC's explicit disclosure of the studies' assumptions ensured transparency and provided a realistic baseline for results, intentionally avoiding the compounding errors inherent in more speculative modeling approaches.[1024] She stated that PSC's work focused on short-term contributions and impacts and assumed limited substitute opportunities for these impacts. By favoring fewer, more reliable assumptions over long-term projections, she asserted that PSC significantly reduced the impact of speculative market developments and other unpredictable local and regional variables on the final estimates.[1025]

In response to Mr. Scuderi's assertion that PSC's assumptions about limited opportunity for recreational substitutes were unrealistic, Ms. Branneman noted that a brief review of Google satellite imagery highlighted the lack of similar water bodies nearby, reinforcing the fact that these impoundments provided unique recreational opportunities for which there were few local substitutes.[1026] She concluded her rebuttal of Mr. Scuderi's testimony asserting that without a representative user survey to establish these

[1024] 3 Tr 212.
[1025] 3 Tr 213.
[1026] 3 Tr 213-214.

substitution rates, any assumption of total economic retention would be highly speculative and unrealistic, especially given the short-term parameters of this work. She specified that PSC prioritized primary qualitative data ensuring that the projected changes in recreational activity "remained grounded in local expertise rather than theoretical conjecture."[1027]

Ms. Branneman also rejected the idea, asserted by witness Greenburg, that Consumers did not sufficiently survey public opinion regarding the dams and their impoundments. She extensively detailed the Company's multi-year community outreach approach to gathering community feedback.[1028]

b. Briefing

In briefing, the Company argues that the various issues raised by MHRC witness Scuderi are immaterial to the overall findings of PSC's reports which conclude that removal of the dams would have a substantial negative effect on local economies in the year after their removal.[1029] Consumers makes several arguments to refute points raised by MHRC witness Scuderi, and these points generally track the rebuttal testimony of Ms. Branneman.[1030] Consumers concludes that Mr. Scuderi's testimony does not provide sufficient reason to doubt that removal of the dams would have an immediate negative effect and that the reports provided by PSC provide a compelling public policy and public interest reasons to adopt a solution that keeps the dams in place.[1031]

[1027] 3 Tr 214-215.
[1028] 3 Tr 215-217.
[1029] Consumers brief, 62.
[1030] See Consumers brief, 60-64.
[1031] Consumers brief, 64.

Croton and Big Prairie Townships filed a joint brief in which they reiterate that the proposed transaction is consistent with public interest for the numerous reasons stated in the testimony provided by witnesses Heinzman and Westgate.[1032] Additionally, the townships argue that Mr. Scuderi's claim about substitute water bodies within 10 miles is flawed because those substitutes would likely lie outside their townships (providing them little solace) and because his count is inflated by including the existing Hardy and Croton impoundments, which are in close proximity to each other but would both disappear if the dams were decommissioned.[1033] Finally, the townships highlight the hardship that current lakefront property owners would endure if the impoundments vanish because their property could then be hundreds, or potentially over a thousand feet away from the newly established river bank if the impoundments are drained.[1034]

In its brief, LAA repeats points raised in witness Soodek's testimony relating to the importance of the Calkin Bridge Dam to the community surrounding Lake Allegan.[1035] LAA emphasizes its support for the proposed transaction because it is the most viable course of action that preserves the dam for the foreseeable future as Confluence intends to relicense and maintain the dam while Consumers would proceed with decommissioning if the transaction if rejected.[1036]

In its brief, MHRC argues that the Company's submitted reports from PSC are unreliable because they use opaque methods, unreasonable assumptions, and narrowly

[1032] Croton/Big Prairie Township brief, 2-4.
[1033] Croton/ Big Prairie Township, 4-5.
[1034] Croton/Big Prairie Township brief, 5.
[1035] See LAA brief, 3-5.
[1036] LAA brief, 5.

examine only the first year after dam removal.[1037] By way of contrast, MHRC states that its expert, Mr. Scuderi, explained that this one-year timeframe ignores long-term economic benefits and artificially inflates projected losses by assuming recreational activity disappears rather than shifts.[1038] MHRC asserts that additional flaws, such as unusual property valuation methods and uncertain visitation estimates, further undermine the credibility of the PSC reports.[1039] MHRC contends that broader evidence shows dam removal often results in neutral or positive economic and property value outcomes.

In its brief, Confluence objects that MHRC presented testimony about property values surrounding dam impoundments, recreational impacts, and nonmarket valuation techniques. Confluence asserts that these matters may touch upon "secondary public concerns" but are not implicated by the factors in MCL 460.6q(7), which should be the touchstone of the Commission's analysis.[1040]

In its reply, MHRC argues that Consumers' claim that selling the dams is the only way to preserve community value is based on an artificially limited analysis. MHRC argues that Consumers restricted the scope of PSC's study to one year, which excludes well-documented long-term benefits of free-flowing rivers. MHRC urges the Commission to rely instead on Mr. Scuderi's evidence demonstrating neutral or positive medium- and long-term community effects of dam removal.[1041]

[1037] MHRC brief, 70-71.
[1038] MHRC brief, 71.
[1039] MHRC brief, 71-72.
[1040] See Confluence brief, 4.
[1041] MHRC reply, 19.

c. Analysis

The Company and MHRC dispute numerous methodological aspects of the PSC studies concerning the effect that potential decommissioning would have on local communities. This PFD declines to wade into the deep end to resolve each separate dispute about study methodology because it is not required to adequately address the key aspects of this issue that are of concern. Instead, this PFD focuses its analysis on the issues essential to resolving the overarching questions of public interest placed before the Commission.

The key dispute between the Company and MHRC reflects a tale of two perspectives: the PSC studies sponsored by the Company focus on communities in the year after decommissioning occurs while MHRC takes a broader, long-term view of the effect decommissioning would have on local communities. These different perspectives are opposite in their approach with respect to the timeframe evaluated, but complementary in the overall picture that they provide.

This PFD finds that it is credible for PSC to conclude that, in the year immediately following decommissioning, local communities would experience job losses associated with the dams and the unique recreational benefits of their impoundments, decreased property values for formerly waterfront property, and resultant lower tax revenue for local communities. This conclusion is generally consistent with the testimony that witnesses Westgate, Heinzman, and Soodek provided about the importance of the impoundments to their respective communities.

This PFD also finds that PSC's narrow focus on the year after decommissioning severely limits insight into the long-term effect that decommissioning could have on local

communities. In this respect, MHRC witness Scuderi's emphasis on a broader temporal outlook is helpful and offers a useful counterpoint that illuminates more positive potential long-term outcomes that PSC's one-year framework does not consider. Of course, MHRC's contentions are inherently more speculative given the longer timeframe, but this PFD also finds it reasonable to conclude that, in subsequent years, new economic benefits springing from the free-flowing rivers will establish themselves. Mr. Scuderi's testimony, which highlights academic research showing that recreational patterns can shift, ecological restoration can generate community value, and long-term impacts often differ from short-term disruptions, provides support for the proposition that local economic conditions may eventually evolve more favorably than PSC's one-year timeframe can reflect. Nevertheless, this PFD is somewhat skeptical that formerly waterfront properties would be able to regain their former market value.

Confluence contends that Mr. Scuderi's testimony regarding property value, recreational impacts, and nonmarket valuation techniques are issues that are "not properly before the Commission under the governing statute."[1042] This PFD found it unnecessary to resolve disputes about these topics for the reasons discussed above. But MHRC's decision to address these topics was clearly prompted by Confluence's counterparty, Consumers, and its submission of PSC reports as evidence in this case relating to public interest. Accordingly, MHRC's submitted testimony falls squarely within the scope of this proceeding, as it was offered in response to the Company's evidentiary claims regarding public interest and it can be considered within that context. In other

[1042] Confluence brief, 3-4.

words, rejecting this evidence for the reason suggested by Confluence would improperly limit MHRC's ability to provide rebuttal to the Company's evidence.

Finally, with respect to the public interest, the statutory directive to determine whether the transaction is inconsistent with public policy or public interest is necessarily broad in scope, and the individual interests of communities adjacent to the dams represent one component of that inquiry. In other words, local interests can inform, but do not comprehensively define, the Commission's consideration of public interest.

2. Environmental Concerns

a. Testimony

Mr. DeCooman testified that Staff had concerns regarding future licensing given ongoing water quality issues caused by the dams. He explained that in 2022 a complaint was lodged with FERC requesting an investigation into water temperature issues at several of the Company's dams. He explained that FERC found that the dams were warming outflows above established criteria, but that Consumers had taken mitigation measures consistent with the requirements in FERC's license.[1043] Mr. DeCooman asserted that while it is unknown at this time, there is a potential that future state permits necessary for operation of the dams may require significant further water temperature mitigation measures.[1044]

Ms. Mistak explained that the Company's hydropower dams cause well-documented harm to natural resources, including degraded water quality, blocked fish passage, disrupted sediment transport, and altered river flows.[1045] She stated that

[1043] 3 Tr 852.
[1044] 3 Tr 853.
[1045] 3 Tr 408.

recent DNR and EGLE[1046] analyses show that all 11 hydropower projects on the Muskegon, Manistee, and Au Sable rivers consistently fail to meet state water temperature standards, contributing to impaired cold water fisheries and threatening Clean Water Act Section 401 certification needed for relicensing.[1047] Ms. Mistak also testified that when queried through discovery, Confluence provided no specific plan to address the water quality issues, which she views as concerning given previous expensive and yet still insufficient mitigation attempts by Consumers.[1048]

Mr. Seelbach, a Volunteer Science Advisor to MHRC and retired faculty member at the University of Michigan School for Environment and Sustainability, testified that the Au Sable, Manistee, and Muskegon Rivers are extremely valuable natural resources because their stable-flow, groundwater-fed systems create exceptional fish habitat.[1049] He explained that Consumers' reservoirs on these rivers bury rare high-gradient reaches—once characterized by rocky rapids, riffles, and deep pools—that historically provided optimal habitat for fish reproduction, shelter, and feeding.[1050] Mr. Seelbach testified that removing the impoundments on the lower sections of the rivers would restore rapids, enhance natural cooling, and reveal rare and extremely high-quality, diverse fish habitats.[1051] He cited the Muskegon River below the removed Newaygo Dam as an example of how restoring high-gradient habitat can help support fish populations.[1052] He

[1046] The Michigan Department of Environment, Great Lakes, and Energy.
[1047] 3 Tr 410-411.
[1048] 3 Tr 412.
[1049] 3 Tr 457-460.
[1050] 3 Tr 460-462.
[1051] 3 Tr 463.
[1052] 3 Tr 463-464.

added that restored access to connected habitats, including reconnection to a Great Lake, would also allow migratory fish to thrive throughout the system.[1053]

Mr. Haefner, a hydrogeologist and contractor with Michigan Trout Unlimited, analyzed water-chemistry data collected downstream of 11 Consumers dams on the Au Sable, Manistee, and Muskegon Rivers from January 1, 2020 through November 10, 2025.[1054] He found that every monitored site had several months, most often July through September, when average water temperatures exceeded FERC License and Michigan Water-Quality Standards, and he noted multiple instances where daily averages increased by more than two degrees Fahrenheit above natural water temperatures.[1055] He also reported that dissolved oxygen fell below the standard of seven milligrams per liter at 10 of the 11 sites at least once during the period of record.[1056] Mr. Haefner explained that warmer water holds less dissolved oxygen, which is essential for aquatic life, and he noted that Consumers controls the amount of water released through its dams based on weather and energy needs, which in turn affects water temperature and dissolved oxygen.[1057] He concluded that elevated water temperatures are common at these dams, especially in summer, and can exacerbate low dissolved oxygen levels.[1058]

Tess Nelkie, a long-time Tawas City resident and former owner of an outdoor recreation business in East Tawas, testified about the importance of the Au Sable River

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[1053] 3 Tr 464-465. Mr. Seelbach added that while enhanced fish migration would also include invasive species, an effective barrier could be designed to optimize migration benefits while minimizing negative effects and that "[s]tate, federal, and tribal agencies are poised to assure this." 3 Tr 465.
[1054] 3 Tr 470-472.
[1055] 3 Tr 472, 479-482
[1056] 3 Tr 472, 483-485.
[1057] 3 Tr 475-477.
[1058] 3 Tr 484.

for local recreation.[1059] She stated that Consumers' dams harm the river by raising water temperatures and disrupting connectivity, which negatively impact trout fishing and canoeing.[1060] Ms. Nelkie expressed concern over the proposed sale of the dams to an out-of-state private equity firm, questioning whether it is economically feasible for Confluence Hydro to operate the dams and citing risks of inadequate safety measures and flooding.[1061] She criticized Consumers for "shirking their moral responsibility to the people who live along the river and their fiscal responsibility to their customers," and she advocated for restoration of the river.[1062]

Josh Greenberg, owner of Gates Au Sable Lodge and acting president of Anglers of the Au Sable, emphasized the Au Sable River's unique character and its vital role in supporting his business, local economies, and recreation.[1063] He argued that the dams harm trout habitat by raising water temperatures and drowning river stretches, reducing economic and recreational value.[1064] Mr. Greenberg expressed concern that the sale would sever long-standing trust and communication between Consumers and local communities, leaving the river vulnerable.[1065] He further opined that public sentiment has not been adequately surveyed and that limited support for keeping the ponds has been "amplified" to justify the sale.[1066]

[1059] 3 Tr 711-713. Ms. Nelkie is a board member of Anglers of the Au Sable and a member of Fly Fishers International and Trout Unlimited. 3 Tr 711.
[1060] 3 Tr 713-714.
[1061] 3 Tr 715.
[1062] 3 Tr 715-716.
[1063] 3 Tr 720-722.
[1064] 3 Tr 722-723.
[1065] 3 Tr 723-724.
[1066] 3 Tr 724.

Steven Sendek, a former DNR senior fisheries biologist and current owner of a fisheries and habitat consulting business, testified about his decades-long professional and personal involvement with the Au Sable River.[1067] He described the river as one of Michigan's crown jewels, essential to diverse fish habitats, recreation, and the region's economic vitality.[1068] He explained that the six dams on the Au Sable harm the river by raising water temperatures, disrupting sediment transport, blocking fish passage, and interrupting recreational watercraft travel.[1069] Mr. Sendek argued that the proposed sale of the dams is not in the public interest, citing concerns that the new owner may fail to meet FERC license requirements or invest adequately in maintenance to prevent catastrophic failure.[1070]

Thomas Buhr, a Luzerne resident and author who has written about the Au Sable River, testified about his decades of fishing and hiking along the river and his efforts to clean and restore it.[1071] He noted that the Au Sable is regarded as one of North America's best trophy brown trout rivers.[1072] He stated that the dams impair the river's health by raising water temperatures and impacting winter flow rates, while acknowledging Consumers' efforts to mitigate these issues.[1073] Mr. Buhr feared that selling the dams to a third party without community ties could jeopardize efforts to improve the river and make it available to the public.[1074]

[1067] 3 Tr 729-731. Mr. Sendek is a member of Trout Unlimited. 3 Tr 729.
[1068] 3 Tr 730-731.
[1069] 3 Tr 732.
[1070] 3 Tr 733.
[1071] 3 Tr 737-739. Mr. Buhr is a member of Anglers of the Au Sable, Fly Fishers International, and Michigan Trout Unlimited. 3 Tr 737.
[1072] 3 Tr 739.
[1073] 3 Tr 740-741.
[1074] 3 Tr 742-743.

Brian Pitser testified about his long-standing connection to the Manistee River as a fly-fishing guide and owner of The Northern Angler Fly Shop, emphasizing the river's ecological and economic importance.[1075] He expressed concern that selling the Hodenpyl and Tippy dams could result in the loss of public access and the privatization of surrounding lands, which could cripple his guide and retail business.[1076] Mr. Pitser warned that mismanagement of the dams could necessitate chemical lampricide treatments that destroy the macroinvertebrates essential to the river's health.[1077] He further argued that the proposed sale is not in the public interest because, unlike Consumers' historical collaboration with local communities, an out-of-state private company would not have to answer to the public for its decisions and would focus on profits without regard to Michigan's water resources.[1078]

Nick Garlock, manager of an outdoor retailer in Grand Rapids and president of Schrems West Michigan Trout Unlimited, testified about the Muskegon River's recreational and ecological value.[1079] He noted that aging dams harm the river's health by raising temperatures and disrupting flow, which affects cold-water fish species and aquatic life.[1080] Mr. Garlock cautioned that selling the dams to an out-of-state private equity firm would eliminate local oversight and accountability, leaving the dams in the

[1075] 3 Tr 747-751. Mr. Pitser is a member of Trout Unlimited and Great Lakes Federation of Fly Fishers International. 3 Tr 748.
[1076] 3 Tr 752.
[1077] 3 Tr 752.
[1078] 3 Tr 752.
[1079] 3 Tr 756-758.
[1080] 3 Tr 757-758.

hands of an inexperienced operator that may lack sufficient funding for proper maintenance or necessary infrastructure removal.[1081]

Kevin Feenstra, a professional fishing guide for 29 years and an author and photographer focused on the Muskegon River, testified about the river's unique ability to support year-round fishing opportunities.[1082] He described the river's ecological diversity, noting that its health depends on stable river flows and clean habitats.[1083] Mr. Feenstra criticized the dams for causing thermal pollution and blocking fish migration.[1084] He warned that the proposed sale to a private equity firm poses serious risk, arguing that the aging dams require investment and responsible management by operators that care about the river, and that the sale is not in the public interest because it could undermine decades of restoration progress.[1085]

In rebuttal for Consumers, Mr. Monroe disagreed with DNR witness Mistak's position on FERC water quality standards and license requirements. Referencing Exhibit A-43, he testified that the Company currently meets FERC water quality requirements as outlined in its license settlement agreement.[1086] He added that all 13 FERC licenses, which impose water quality requirements, will be transferred to Confluence and the requirements will not change because of the transfer process, although requirements can be altered when facilities are relicensed.[1087] Mr. Monroe testified that through its due diligence process, Confluence is aware of the water quality requirements and concerns.

[1081] 3 Tr 757-758.
[1082] 3 Tr 763-765. Mr. Feenstra is a member of Trout Unlimited and Fly Fishers International. 3 Tr 763.
[1083] 3 Tr 765-766.
[1084] 3 Tr 766.
[1085] 3 Tr 767-768.
[1086] 3 Tr 182.6 (citing Exhibit A-43).
[1087] 3 Tr 182.7.

He stated that FERC, not the sale process, oversees the water-quality requirements in the existing license, and those obligations will transfer to Confluence and can be revisited during relicensing.[1088]

Mr. Monroe disagreed with MHRC witness Haefner's suggestion that Hardy and Rogers Dams are subject to cold-water quality limits, explaining that both dams are regulated under warm-water limits established by the State of Michigan during relicensing. He clarified that warm-water limits allow higher temperatures and lower dissolved oxygen thresholds than cold-water projects, and these limits are what FERC applies in the licenses.[1089] He reiterated that all 13 dams comply with the applicable FERC license settlement agreement.[1090]

In his rebuttal, Mr. Blumenstock briefly addressed several witnesses associated with MHRC. In response to Mr. Feenstra, he contended that it was incorrect to claim Consumers is barely maintaining the dams because the Company's rate cases show significant expenditures on maintenance efforts.[1091] In response to Mr. Garlock, he stated that the Company properly manages river flow rates as required by FERC.[1092] He similarly sought to allay Mr. Sendek's concerns about whether Confluence will abide by license requirements by stating that FERC will enforce its license requirements and Confluence has a history of compliance.[1093] Mr. Blumenstock answered Mr. Pitser's claim that Confluence could limit public access or develop project lands by pointing to Confluence's

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[1088] 3 Tr 182.9.
[1089] 3 Tr 182.9.
[1090] 3 Tr 182.12.
[1091] 3 Tr 114.
[1092] 3 Tr 114.
[1093] 3 Tr 115.

statements that they do not intend to alter public access or engage in property development.[1094] He asserted that Mr. Buhr's concerns about Confluence reputation as a partner have been addressed by other aspects of his testimony related to concerns about Confluence.[1095] Mr. Blumenstock rejected Mr. Greenburg's opinion that there was an insufficient survey of public sentiment and testified about the numerous forums and meetings that the Company held in affected communities.[1096] He rejected Ms. Nelkie's assertion that Consumers is selling the dams because they are unprofitable; instead, he explained that the Company can profit from any asset in its rate base and that the sale is the lowest-cost option compared to all other options.[1097]

b. Briefing

In briefing, Consumers states that it met the requirements of its FERC licenses and the measures put into place to address water quality will be transferred when the dams are purchased by Confluence.[1098] The Company asserts that it is in compliance with its FERC license requirements regarding water quality, and that, in any event, the Commission is not the appropriate authority to address water quality issues.[1099] Consumers emphasizes that Confluence is aware of water quality requirements and that FERC can determine if any additional water quality measures are justified during the relicensing process.[1100]

[1094] 3 Tr 115.
[1095] 3 Tr 115.
[1096] 3 Tr 115.
[1097] 3 Tr 115.
[1098] Consumers brief, 64.
[1099] Consumers brief, 64.
[1100] Consumers brief, 65.

In its brief, Staff argues that multiple dams are facing documented water temperature exceedances and that EGLE has formally warned, as shown by Exhibit DNR-15, that all 11 Muskegon, Manistee, and Au Sable dams are currently failing to meet the water-quality standards required for future Section 401 certifications, credentials important for FERC relicensing.[1101] Staff further notes that while Consumers and Confluence point to current compliance with FERC license terms, they ignore the separate and unresolved EGLE requirements, leaving a significant relicensing risk unaddressed.[1102] Staff concludes that Confluence's lack of a concrete mitigation plan, combined with Consumers' dismissal of EGLE's findings, makes the looming water-quality compliance issue a serious and insufficiently considered risk.[1103]

The DNR asserts that it is questionable whether Confluence will attempt to relicense the dams or be successful in doing so because 11 of the dams are not consistently meeting water temperature standards, and Confluence would need to secure Clean Water Act Section 401 certification from EGLE to relicense the dams.[1104] However, the DNR asserts that in discovery Confluence stated that it did not have a specific plan to address water quality issues and would merely work to identify potential mitigation efforts.[1105]

MHRC argues that Confluence has no specific plan to address the water-quality violations at the dams, which currently cause elevated temperatures and low dissolved

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[1101] Staff brief, 52.
[1102] Staff brief, 53.
[1103] Staff brief ,53-54.
[1104] DNR brief, 10.
[1105] DNR brief, 10.

oxygen that harm river ecosystems.[1106] MHRC notes that Consumers has spent substantial, rate-recoverable funds attempting mitigation, though even those measures have not brought the dams into compliance, while Confluence may lack both the ability or incentives to invest similarly.[1107] MHRC concludes that resolving these significant environmental problems is more reliably achieved under Commission oversight of Consumers as a regulated utility rather than through a transfer to Confluence.

MHRC argues that because the rivers affected by the 13 dams are unique public-trust resources, the Commission has a legal duty under Michigan's public trust doctrine to protect these waters and should not approve a transaction that threatens the public's long-held rights to navigation, fishing, and ecological stewardship.[1108] MHRC notes that the nature and scope of the Commission's consideration of the public trust doctrine is before the Michigan Supreme Court,[1109] and MHRC asserts that the public trust doctrine is implicated for two reasons.

First, MHRC argues that its unrebutted evidence shows that the dams violate water-quality standards for temperature and dissolved oxygen, thereby harming fisheries and ecosystems. MHRC states that neither Consumers nor Confluence has a viable plan to fix these long-standing impairments, which the Commission must weigh given the state's duty to protect public trust resources.[1110]

Second, MHRC argues that selling the dams to a private equity firm creates a significant risk of abandonment, bankruptcy, and dam failure across multiple LLCs, a

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[1106] MHRC brief, 69.
[1107] MHRC brief, 69.
[1108] MHRC brief, 72-74.
[1109] MHRC brief, 74 n 20 (citing *For Love of Water v MPSC*, 25 NW3d 319 (Mich 2025)).
[1110] MHRC brief, 75-76.

danger the Commission must weigh given the vulnerable public-trust resources at stake.[1111]

MHRC also argues that the Commission must conduct a Michigan Environmental Protection Act (MEPA) review and determine the extent to which the proposed sale of the dams would impair Michigan rivers. MHRC cites MCL 324.1705(2) for the proposition that MEPA requires administrative agencies and courts to prevent activities that pollute or harm natural resources when a feasible, prudent alternative exists that still meets public health, safety, and welfare needs.[1112] MHRC acknowledges that the nature and scope of the Commission's consideration of MEPA is currently before the Michigan Supreme Court, but MHRC asserts that MEPA applies and the Commission should not approve the proposed transaction.[1113] MHRC asserts that the rivers at issue are unquestionably natural resources within the purview of the MEPA statute, and the undisputed evidence shows that the dams violate the State's water quality standards for water temperature and dissolved oxygen.[1114] MHRC contends that continued operation by Consumers or decommissioning are more feasible and prudent alternatives under MEPA than the proposed transaction.[1115]

Confluence's briefing criticizes the DNR for including testimony about fish migration and water temperature standards as these are secondary public concerns, at

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[1111] MHRC brief, 76.
[1112] MHRC brief, 77.
[1113] MHRC brief, 77 (citing *Little Traverse Bay Band of Odawa Indians, et al v MPSC*, 25 NW3d 377 (Mich 2025)).
[1114] MHRC brief, 78.
[1115] MHRC brief, 78.

least some of which are regulated by FERC, and the Commission should not duplicate FERC's regulatory oversight.[1116]

In its reply, the Company addressed MHRC's demand for the Commission to perform a public trust doctrine analysis and a MEPA review. Consumers contends that the current state of the law is that, based upon a 2025 Michigan Court of Appeals decision, the Commission lacks authority to apply the public trust doctrine; however, the Michigan Supreme Court granted leave to appeal, and a decision may be expected soon.[1117]

Consumers contends that the only cases in which Michigan courts and the Commission have ever applied a MEPA analysis to MPSC approval processes have been in certificate of public convenience and necessity proceedings. The Company explained that in such proceedings physical changes to the environment would occur because of the construction of pipelines or plants, but this case proposed no changes to the environment at all.[1118] Even if a MEPA analysis was conducted, the Company asserts that it would not support a decision to reject the proposed transactions. Consumers outlines the steps of a MEPA analysis as: (1) first determining whether conduct that is sought to be authorized or approved would result in pollution, impairment, or destruction of the air, water or natural resources; and (2) if so, whether there was a feasible alternative.[1119] Consumers contends that the conduct at issue in this case, the sale of dams, does not seek any physical changes to the dams and would have no effect at all

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[1116] See Confluence brief, 4.
[1117] Consumers reply, 52 (citing *In re Enbridge Energy to Replace & Relocate Line 5*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket Nos. 369156, 369157, 369159, 369161, 369162, 369163, 369165, 369231); slip op at 22, lv gtd 25 NW3d 319 (Mich, 2025).
[1118] Consumers reply, 53.
[1119] Consumers reply, 53 (citing *In re Enbridge Energy,* ___ Mich App ___; slip op at 24).

on the environment.[1120] The Company explains that MHRC may argue that the dams impair water quality, but the environmental impact of the dams will be the same before and after the sale, and the sale does not cause any condition that does not already exist.[1121] Consumers also argues that even if the sale caused some environmental impact, the Commission need not address it under MEPA because those issues fall within the authority of other state and federal agencies (i.e. EGLE and FERC), on whom the Commission is permitted to rely.[1122]

In its reply, the DNR rejects Confluence's characterization of concerns about fish migration and water temperature as "secondary public concerns" because it is integral to the Commission's duty to consider whether the transaction is inconsistent with public policy and interest.[1123] The DNR argues that the fate of the dams is fundamentally intertwined with the public interest and natural resources are harmed by dams which means it is imperative for dam owners to be capable and willing to redress environmental issues.[1124] The DNR reiterates that Confluence lacks a clear plan to address known water quality issues, and this fact raises concerns that it either does not understand operational requirements or may intend to sell the dams for profit, contrary to the public interest.[1125]

DNR also argues that Consumers wrongly dismisses Ms. Mistak's accurate testimony that the dams must obtain Clean Water Act Section 401 certifications for relicensing, regardless of current license compliance. Consumers ignores that the dams

[1120] Consumers reply, 54.
[1121] Consumers reply, 55.
[1122] Consumers reply 55-56.
[1123] DNR reply, 4.
[1124] DNR reply, 4-5.
[1125] DNR reply, 5.

currently fail to meet water temperature standards and that any future owner must address these issues to be relicensed.[1126] The DNR asserts that this matters because Confluence has presented no plan to fix the longstanding water quality problems, raising doubts about its intent or ability to successfully relicense the dams.[1127]

In its reply, Confluence submits that the Michigan Court of Appeals recently held that the Commission cannot apply the common-law public trust doctrine since the Commission is a creature of statute and possesses only powers derived from statute.[1128] Confluence argues that similarly, the Commission should not perform a MEPA review as it is not implicated by the criteria under MCL 460.6q which govern this proceeding.[1129]

c. Analysis

The parties' disputes about environmental issues seem to revolve around three key disputed topics, each of which will be addressed below.

First, the parties dispute whether the dams currently exceed water temperature restrictions and whether this fact will pose a barrier to relicensing.

FERC itself determined that the dams impair water quality by warming outflows above established criteria.[1130] However, FERC also determined that, consistent with license or other legal requirements, Consumers followed all required procedures to identify, fund, and implement measures to improve water quality, which included the

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[1126] DNR reply, 12.
[1127] DNR reply, 12-13.
[1128] Confluence reply, 15 (citing *In re Enbridge Energy to Replace & Relocate Line 5*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket Nos. 369156, 369157, 369159, 369161, 369162, 369163, 369165, 369231); slip op at 22, lv gtd 25 NW3d 319 (Mich, 2025).
[1129] Confluence reply, 15-16.
[1130] Exhibit A-43, p. 9.

installation of upwelling systems at certain dams.[1131] Thus, there is nuance in that, while there is noncompliance with water temperature standards, there is compliance with required mitigation efforts such that FERC closed its investigation after making that determination.[1132] As FERC explained, "[t]he Rules and resulting license conditions strive for the improvement of water quality toward attainment of the standard in these cases where [water quality standards] cannot be met under reasonable technological or economical means; they do not demand attainment if the [water quality standards] are not met and there are acceptable efforts made toward improvement."[1133]

As Staff and the DNR argue, it is possible that the existing noncompliance with water temperature standards may pose a barrier to relicensing. The record also reflects that Confluence has not developed a specific plan to address these water quality issues, which is understandably concerning given the longstanding nature of the temperature exceedances. However, the ultimate standards, conditions, and any required mitigation measures would presumably be determined during the relicensing process. Because neither the scope nor the feasibility of any potentially required mitigation is yet known, it is not unreasonable that Confluence has not developed a detailed remediation plan at this stage.

Further, the Commission's role is focused on determining whether the proposed transaction meets the statutory requirements under MCL 460.6q. Although the record demonstrates ongoing water-temperature exceedances and uncertainty regarding future state and federal approvals, those specific regulatory determinations fall within the

[1131] Exhibit A-43, p. 9.
[1132] Exhibit A-43, p. 9.
[1133] Exhibit A-43, p. 9.

jurisdiction of FERC or EGLE during future licensing proceedings. Accordingly, these unresolved environmental issues, while undoubtedly important to the public interest, do not provide a sound basis for rejecting the proposed sale under the standards applicable in this proceeding.

Second, MHRC contends that environmental issues are reviewable by the Commission under the state's common-law public trust doctrine. However, the Court of Appeals recently concluded that the Commission lacks the authority to apply the common-law public trust doctrine because the Commission lacks common-law powers.[1134] Accordingly, unless that determination is reversed by a pending Michigan Supreme Court decision (discussed further, *infra*), then the Commission simply lacks the ability to independently review environmental issues through a common-law public trust doctrine analysis.

Third, MHRC contends that the Commission must conduct a MEPA review. MHRC cites MCL 324.1705(2) for the proposition that MEPA requires administrative agencies and courts to prevent activities that pollute or harm natural resources when a feasible, prudent alternative exists that still meets public health, safety, and welfare needs. The statutory provision that MHRC relies upon states:

> 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 trust 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.[1135]

[1134] *In re Enbridge Energy to Replace & Relocate Line 5*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket Nos. 369156, 369157, 369159, 369161, 369162, 369163, 369165, 369231); slip op at 22, lv gtd 25 NW3d 319 (2025), lv gtd 25 NW3d 327 (2025).

[1135] MCL 324.1705(2).

In two separate appeals stemming from the same underlying MPSC case, the Michigan Supreme Court is examining the scope of the above MEPA provision and whether its reference to the public trust doctrine allows the Commission to apply that doctrine.[1136]

This PFD agrees with Consumers that, under the current state of the law, it is questionable whether this provision of MEPA applies to this case since it has generally been applied to certificate of public convenience and necessity proceedings wherein pipelines or other new infrastructure would physically alter the environment. By contrast, the instant case under MCL 460.6q addresses the sale of existing dams to a new owner with no resulting physical alteration of the environment.

Even assuming a MEPA analysis were required, this PFD adopts the analysis set forth in Consumers' reply briefing and incorporates it herein by reference.[1137] In sum, the operative "conduct" in this case that is subject to authorization or approval under MCL 324.1705(2) is the sale of the dams. But the record does not show that the transfer of

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[1136] The Michigan Supreme Court granted two separate applications for leave to appeal from the Court of Appeals' previously mentioned decision *In re Enbridge Energy to Replace & Relocate Line 5,* ___ Mich App ___, ___; ___ NW3d ___ (2025). In one grant, the Court sought to review the questions of whether "(1) in enacting MCL 324.1705(2) of the Michigan Environmental Protection Act, MCL 324.1701 *et seq*., the Legislature required the Michigan Public Service Commission (MPSC) to comply with the common-law public trust doctrine; (2) if not, the common-law public trust doctrine nonetheless requires such compliance, see *Glass v Goeckel*, 473 Mich 667, 694-696, 703 NW2d 58 (2005); and (3) if the MPSC is required to comply with the common-law public trust doctrine, what a proper public trust analysis would entail in MPSC proceedings." ___ Mich ___; 25 NW3d 319 (2025). In the other granted application, the Court sought to address whether the Court of Appeals erred by: (1) applying a deferential standard of review rather than determining de novo whether the proposed conduct will pollute, impair, or destroy the air, water, or state's other natural resources or the public trust in these resources under MCL 324.1705(2) of the Michigan Environmental Protection Act (MEPA), MCL 324.1701 *et seq*., in accordance with *West Mich Environmental Action Council, Inc v Natural Resources Comm*, 405 Mich 741, 752-755, 275 NW2d 538 (1979); and (2) affirming the Michigan Public Service Commission's limitation on the scope of the evidence to be reviewed regarding its determinations under MCL 324.1705(2) of MEPA and its decision to exclude evidence of the history and risk of oil spills along the entire length of Line 5 in those determinations." ___ Mich ___; 25 NW3d 327 (2025). Both appeals remain pending before the Michigan Supreme Court and a decision can be expected no later than the end of the Court's term on July 31, 2026. See MSC Docket Nos. 168346 and 168335.

[1137] See Consumers reply, 53-56.

ownership itself will cause pollution, impairment, or destruction of natural resources. Thus, further consideration under MEPA is not required because the conduct to be approved does not, by itself, cause environmental harm. Again, the dams are existing structures, so their environmental effects remain unchanged merely by a change in ownership.

In any event, the Commission's ultimate analysis of MEPA and its potential interplay with the common-law public trust doctrine will likely be have to informed by the Michigan Supreme Court's forthcoming decisions in the above-referenced cases given that they are likely to be decided during the pendency of this matter.[1138]

3. Conclusion Regarding Public Policy and Interest Under MCL 460.6q(7)(e)

This PFD concludes that the proposed transaction is inconsistent with public policy and public interest.

This PFD acknowledges that it is in the interest of local communities to see the dams maintained given their reliance on the impoundments for recreation, tourism, property values, and other related benefits. At the same time, this PFD also views public interest more broadly and recognizes that different parties have varying interests which may not be consistent with each other. For example, the interests of other nearby residents or environmental groups may prefer free-flowing rivers that would result from decommissioning. Moreover, the Commission's assessment of environmental issues and their impact on the public-interest analysis will be likely significantly affected by the Michigan Supreme Court's forthcoming decisions, referenced above. Given that a

[1138] Oral argument was held on both cases in March of 2026, and the Michigan Supreme Court's current term ends on July 31, 2026, so both cases are likely to be decided no later than that date. See MSC Docket Nos. 168346 and 168335.

proposal cannot be consistent with the diverse interests of all subsectors of the public, this PFD agrees with the general notion, proposed by Confluence, that the proposed transaction should not be inconsistent with the public interest of the state, read broadly.[1139]

It is in the state's public interest that the transaction should not have an adverse impact on safety and should have the least adverse impact on utility rates for customers in the state. Those considerations are already addressed by MCL 460.6q(7)(a) and (b), and this PFD previously concluded that the transaction has an adverse effect on safety, which also means that the transaction is inconsistent with public interest.

This PFD also suggests that, for a transaction involving infrastructure like major hydroelectric dams to be in the public interest, it would be a transaction that ensured the new owner is financially committed and able to meet the dam's full lifecycle needs, thereby protecting taxpayers from assuming future liabilities such as decommissioning costs. This transaction fails that test.

Regarding eventual decommissioning, Confluence stated, "With appropriate maintenance and repairs, Confluence Hydro believes each of these projects has perpetual viability. Confluence Hydro does not intend to decommission any of these dams."[1140] Confluence's statement is true on one level: dams can be perpetually viable with appropriate investments in maintenance. But the relevant question is whether it will continue to be economically rational to make those investments in perpetuity. If the costs of ongoing maintenance, repairs, and safety upgrades exceed expected revenues or offer

[1139] See Confluence reply, 7.
[1140] Exhibit MHRC-53.

insufficient return, continued operation becomes economically untenable. These dams are already more than a century old on average, generate relatively little electricity as an overall portion of Consumers' portfolio, and their unfavorable economic profile is precisely why the Commission previously directed Consumers to evaluate long-term options such as divestment and decommissioning. Given that these dams have already reached a point where their long-term economic viability is in question, it is uncertain, and likely unrealistic, to assume they will remain economically viable in perpetuity even after relicensing. Only the PPA, with its far-above-market pricing, keeps the dams sustainable under the proposed transaction, but the PPA expires in 30 years.

Both Consumers and Confluence have acknowledged that the proposed transaction shifts the "end-of-term cost risks" like decommissioning activities to Confluence, which is generally why some parties conclude it is the option with the least cost risk when compared to Consumers performing decommissioning or relicensing itself.[1141] Confluence even highlights this as a benefit of the proposed transaction stating, "it is clear that whatever the decommissioning costs may be, having a private party responsible for paying them is less cost and risk to ratepayers than having ratepayers fully responsible for paying them."[1142]

Confluence's statement is true on one level: it *could* potentially be less cost and risk to ratepayers if a private party is responsible for decommissioning. But the pertinent question is whether that private party actually will pay for decommissioning. Confluence's statements indicate that it is essentially wagering that the dams will always be

[1141] See 3 Tr 99; Exhibit MHRC-83; Confluence reply, 7.
[1142] Confluence reply, 8.

economically viable such that it will never have to decommission them. If that wager proves incorrect, there is no indication that Confluence will have the financial capacity to pay for decommissioning, especially given the existing concerns about its financial capability, see Section C(1)(c)(*iii*), *supra*, and the high costs associated with decommissioning, see Section B(1)(b), *supra*. Confluence, or its subsidiary LLCs, could avoid those costs through bankruptcy, which would leave public intervention as the most likely fallback as recognized by Staff.[1143]

Accordingly, this PFD views the proposed transaction as one in which Confluence is paid to take on future liabilities which it wagers it will never need to pay, while the public would be left as the unspoken backstop if Confluence's wager turns out to be incorrect. Confluence argues that MHRC, DNR, and other parties improperly frame the transaction as shifting risk to taxpayers when it truly shifts risk onto Confluence.[1144] It is true that Confluence would technically be responsible for end-of-term costs like decommissioning as the new owner. But Confluence anticipates never needing to pay for end-of-term costs and can easily avoid them if they materialize. Thus, the public is never truly relieved of ultimate liability. Almost every intervening party that considered long-term outlooks recognized this to be the case either explicitly, as with Staff, DNR, and MHRC, or by clear implication, such as through the Attorney General's insistence that parent-level financial guarantees must be a condition of the transaction (an insistence shared by Staff).

Taken together, the evidence shows that the proposed transaction shifts end-of-term decommissioning responsibility to Confluence without offering any meaningful

[1143] See 3 Tr 856.
[1144] See e.g. Confluence reply, 8.

protection against the very real risk that those costs will still ultimately fall on the public. While Staff and the Attorney General proposed parent-level financial guarantees that would ostensibly address that concern, the Company preemptively rejected such measures as discussed in Section E of this PFD, *infra*. Accordingly, this PFD concludes that the transaction is inconsistent with the public interest.

E. Proposed Additional Terms and Conditions

Recall that MCL 460.6q permits the Commission to impose reasonable terms and conditions on the transaction to protect the regulated utility or its customers.[1145] MHRC witness Jester contended that there is no way for the Commission to condition this transaction to protect the public from the adverse incentives that result from hydropower facilities being owned by an entity other than a rate-regulated utility.[1146] By contrast, Staff and the Attorney General proposed several additional terms and conditions.

However, in rebuttal for the Company, Mr. Blumenstock emphasized that the terms of the proposed transaction are "complete and final" such that any new conditions "are not appropriate" and Consumers and Confluence "are not open to their consideration."[1147] He stated that the imposition of any terms or conditions would result in the termination of the sale agreement, and Consumers would proceed to decommission the dams.[1148] In briefing, the Company repeated this position stating: "If the Commission adopts Staff's or the Attorney General's proposed conditions, the Company will exercise its right under MCL 460.6q(8) and (9) to reject the conditions and not proceed with the transaction."[1149]

[1145] MCL 460.6q(8) and (9).
[1146] 3 Tr 603-604.
[1147] 3 Tr 74.
[1148] 3 Tr 134.
[1149] Consumers brief, 66-67.

In turn, Staff's briefing argues that Consumers provided no valid arguments against the adoption of Staff's conditions for the sale, which are needed to protect the utility's customers.[1150] Staff equates the Company's stance to an ultimatum that the transaction is not up for further negotiation, and Staff considers that unacceptable.[1151] Staff asserts that the Commission's approval must be conditioned on the inclusion of Staff's conditions which ensure risk is appropriately managed and that "[i]f such conditions make this approval untenable for the Company, then this transaction should not be approved."[1152] Finally, Staff asserts that if the Commission opts to place conditions on the transaction, it should require any conditions to be expressly accepted by Consumers prior to finalizing the transaction with Confluence. Staff asserts that requiring Consumers to accept any Commission-imposed conditions before finalizing the transaction is necessary to avoid the kind of prolonged disputes and litigation, i.e. petitions for rehearing or appeal, such as occurred in Case No. U-16366 when a conditional approval was later challenged.[1153]

The Attorney General acknowledges that her analysis concludes that the sale and PPA will have the least effect on customer rates, but she contends that, given various other serious concerns, the sale "is only a reasonable decision if the Commission imposes all the conditions recommended by the Attorney General."[1154] She clarifies that absent the thirteen conditions that she proposes, the Commission should reject the proposed transaction.[1155]

[1150] Staff brief, 55-56.
[1151] Staff brief, 56.
[1152] Staff brief, 56.
[1153] Staff brief, 72.
[1154] Attorney General brief, 58.
[1155] Attorney General brief, 60.

In its reply, Consumers argues that Staff's request to require the Company to accept any conditions prior to finalizing the transaction is either redundant (because the Company cannot close without accepting the conditions the Commission imposes) or an improper attempt to restrict Consumers' legal right to seek rehearing or appeal. The Company contends that the Commission has no authority to limit those rights, making Staff's proposal both confusing and unlawful if interpreted that way.[1156]

In its reply, Staff emphasizes that it has serious concerns about the transaction that have not been adequately addressed on the record, including the risk associated with Confluence's ownership structure in the event than an individual LLC could not cover its liabilities. Staff contends that it cannot recommend approval without conditioning it upon a Parent Guarantee (described *infra*) and argues that Consumers improperly frames its own refusal to accept reasonable conditions as the Commission "choosing" decommissioning, when that outcome would be solely the result of Consumers' business decision.[1157]

In her reply, the Attorney General objects to the Company's stance that it will move to decommission the dams if the Commission imposes conditions on the transaction. She states: "To the extent that such pronouncements are intended to deter the Commission from imposing any reasonable conditions in this case, they should be rejected."[1158] She asserts that even if the Company ultimately exercises its right to reject conditions and walk away, "the Commission should impose them nonetheless if warranted."[1159] The

[1156] Consumers reply, 57.
[1157] Staff reply, 8-9.
[1158] Attorney General reply, 3.
[1159] Attorney General reply, 4.

Attorney General rejects the Company's claims that her proposed conditions are unnecessary for various reasons and counters that, if true, it should not matter if the Commission imposes conditions because they would never be triggered.[1160] Further, the Attorney General asserts that the Company's claims that it cannot renegotiate the deal or that Confluence would reject conditions should be viewed with skepticism because the core of the deal would remain unchanged and Confluence never explicitly rejected proposed conditions in its initial brief.[1161]

In its reply, MHRC contends that while Staff and the Attorney General proposed conditions to address various concerns, the conditions are insufficient and fail to solve the problems that Staff and the Attorney General identify for the reasons stated by MHRC's witnesses (discussed *infra*). Thus, MHRC contends that the proposed conditions are insufficient to protect the ratepayers, the State of Michigan and its taxpayers, and important public policy and interests.[1162]

This PFD takes the Company at its word when it states that it will not entertain any proposed terms or conditions; however, for the sake of completeness this PFD will detail the proposals and the positions of the parties. Recommended conditions from Staff and the Attorney General related to the FCM and land sale matters are discussed in the appropriate subcategories of Section B of this PFD, *supra*. However, the remaining proposed conditions are analyzed below, with some being addressed together because of their similarities.

[1160] Attorney General reply, 4.
[1161] Attorney General reply, 6, 7.
[1162] MHRC reply, 23.

1. Parent Company Guarantee & Funding Commitments

a. Testimony

Mr. DeCooman testified that if Confluence or one of its subsidiary LLCs goes bankrupt or is unable to maintain its dams, then the outcome of that situation is "unclear."[1163] [redacted][1164] He stated that, taken together with the terms of the Environmental Indemnity Agreement (EIA), this means that Consumers would be fully released from ongoing or future liabilities.[1165] Further, if one of the individual facility-owning LLCs files for bankruptcy, its liabilities would not become the responsibility of its parent company, Confluence, or Confluence's parent company, HSE.[1166] Mr. DeCooman opined that if such a scenario occurred, then it was unclear how the dams would be maintained, but there would likely need to be "some kind of intervention to fund necessary maintenance . . . to at a minimum ensure the safety of the public."[1167]

To prevent this scenario, he recommended requiring a Parent Guarantee between HSE and each Confluence-owned LLC that possesses a hydro facility ensuring that HSE or its wholly owned affiliates will operate and maintain each dam in compliance with all federal and state regulations for as long as they own the assets, and that ownership and all related responsibilities automatically revert to the parent company in the event of

[1163] 3 Tr 855.
[1164] Conf 3 Tr 1262 (citing Conf Exhibit S-1.7).
[1165] 3 Tr 855.
[1166] 3 Tr 855.
[1167] 3 Tr 856.

insolvency.[1168] If HSE seeks to dissolve or eliminate all liabilities, it would be required to fully decommission and remove the dams or pursue a partial decommissioning with local transfer through a community agreement.[1169] He added that any future sale of the dams should require the new owners to adopt the same Parent Guarantee.[1170]

Similarly, Mr. Coppola recommended requiring HSE to guarantee all environmental and other liabilities and obligations of Confluence, including obligations under the PSA, PPA, RDA, and EIA.[1171] Likewise, he also recommended that the Commission require HSE to commit funds to Confluence to the extent necessary above and beyond HSE's preexisting commitment amount.[1172]

In his rebuttal for Consumers, Mr. Blumenstock testified that the parent guarantee "is an unreasonable and unneeded condition for this transaction."[1173] He opined that it was unreasonable because the terms of the transaction are finalized, the guarantee is inconsistent with the terms, and there is no reason to believe that Confluence would agree to such a condition.[1174] He also reiterated that Confluence had sufficient financial backing from HSE and sufficient funding from revenue derived from the PPA.[1175] He opined that the parent guarantee was unneeded because HSE has proven to be a safe operator, and FERC will have continual jurisdiction over the facilities.[1176] He stated that the imposition

[1168] 3 Tr 856.
[1169] 3 Tr 857.
[1170] 3 Tr 857.
[1171] 3 Tr 318, 323.
[1172] 3 Tr 310, 324.
[1173] 3 Tr 88.
[1174] 3 Tr 88.
[1175] 3 Tr 125.
[1176] 3 Tr 88.

of such a guarantee requirement would cause the transaction to be terminated and Consumers would proceed to decommission the dams.[1177]

In his rebuttal, Mr. Wedoff presumed that Mr. Coppola's proposed contractual conditions[1178] would impose unacceptable costs on Confluence and HSE, causing them to reject the new conditions. In Mr. Wedoff's view, if the sale continued to fruition with the conditions, Consumers, adjoining property owners, the State of Michigan and its taxpayers would still ultimately bear the cost of a dam failure or similar event.[1179] Mr. Wedoff repeated his direct testimony that Consumers' potential liability in relation to the dams incentivizes it to maintain and safely operate the dams. He recognized that Mr. Coppola's contractual conditions relating to financial guarantees attempt to transfer this incentive to HSE by making HSE liable for Confluence's liabilities. However, because there is no assurance that either entity will have the financial resources to address such a liability, the State and taxpayers effectively remain third-party guarantors to the agreement, bearing the costs of a dam failure or other harms.[1180] He added that the proposed terms and conditions may not even ensure that any guarantee is enforceable because the full nature of HSE's assets and finances is unknown, the $2.5 million cash account and $50 million insurance policy in the EIA may not be sufficient to cover large environmental liabilities, and Confluence is likely to have negative cashflows. Thus, he

[1177] 3 Tr 123.
[1178] Mr. Wedoff's testimony was in relation to all 13 of Mr. Coppola's proposed terms and conditions, but his testimony most aptly applied to, and specifically cited, Mr. Coppola's proposed conditions related to financial guarantees from HSE.
[1179] 3 Tr 501-502.
[1180] 3 Tr 502-504.

opined that "HSE is unlikely to carry unsecured assets that could be attached in the event that it fails to honor its contractual obligations."[1181]

Dr. Lyon's rebuttal addressed the perceived shortfalls of the proposed conditions, particularly the parent company guarantee.[1182] Dr. Lyon outlined that Confluence Hydro, LLC is wholly owned by HSE, and by Hull Street Energy Partners III, LP (HSE III), a limited liability partnership created to be HSE's third private equity portfolio. HSE III and its affiliates have equity commitments of approximately $2.2 billion and have approximately ten limited partners, primarily domestic pension funds, along with a foundation and a foreign sovereign wealth fund.[1183]

Dr. Lyon opined that the additional contract provisions[1184] proposed by Staff and the Attorney general would be insufficient to protect ratepayers and Michigan citizens because the parent company, HSE, may also fail to hold sufficient assets to cover future liabilities.[1185] Dr. Lyon opined that contracts are unable to address all possible future contingencies such as contract renegotiation; thus, any contract is inherently incomplete, an issue detailed in legal and economics literature.[1186] Dr. Lyon listed several scenarios where Michigan citizens may bear risks related to the dams despite a parent-level guarantee, including but not limited to situations where both Confluence and its parent company are judgment-proof, where both file for bankruptcy, or where one is sold to

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[1181] 3 Tr 505.
[1182] 3 Tr 694-698.
[1183] 3 Tr 695-696.
[1184] While Dr. Lyon references all 13 proposed additional contract provisions, he primarily discusses only those related to parent-level financial guarantees.
[1185] 3 Tr 696-697.
[1186] 3 Tr 697-698.

another company.[1187] Additionally, he opined that it is not clear whether HSE or HSE III is the true parent company subject to contract alterations proposed by Staff and the Attorney General, and it is not clear if HSE has a contractual responsibility to cover HSE III's liabilities.[1188]

Mr. Jester's rebuttal offered similar critiques of the parent-level guarantee proposed by witnesses DeCooman and Coppola. He opined that Mr. Coppola's proposal only addressed the sufficiency of capital through the PPA and did not look beyond the PPA to the long-term liabilities of owning the dams.[1189] Regarding Mr. DeCooman's proposal, he opined that it was ambiguous as to how the State could enforce any conditions, and he opined that the proposal to condition the transfer of the dams to another party on the continuation of a parental guarantee would be ineffective. He explained, "Hull Street could easily spin off a separate entity that is not owned by Hull Street Energy and transfer the parental guarantee to that entity as the owner of Confluence Hydro, providing it with no assets other than Confluence Hydro, thereby effectively nullifying the parental guarantee."[1190] Mr. Jester opined that the fact that both Staff and the Attorney General have requested multiple additional conditions on the sale should be "an indication that the deal . . . is not a good deal for Consumers Energy's customers or the people of the State of Michigan."[1191]

[1187] 3 Tr 697-698, 701-702.
[1188] 3 Tr 701-702.
[1189] 3 Tr 668.
[1190] 3 Tr 668.
[1191] 3 Tr 669.

b. Briefing

In briefing, the Company opposed Staff's Parent Guarantee for the reasons already stated by Mr. Blumenstock.[1192] The Company added that the Parent Guarantee was legally problematic because any provision for reversion of ownership as proposed by Staff appears to be inconsistent with Michigan real property law and U.S. bankruptcy law.[1193] The Company also pointed out ways in which Staff's proposed requirement to dissolve liabilities was fundamentally inconsistent with the transfer of liabilities contemplated in the EIA.[1194] Consumers concluded that "[t]he parent guarantee recommended by Staff is not well thought out and is not an appropriate condition of approval."[1195]

The Company similarly rejected the Attorney General's proposals related to guarantees of performance for the reasons already stated by Mr. Blumenstock.[1196] The Company specifically rejected inclusion of a provision requiring HSE to fund Confluence above its initial commitment amount because it was contrary to the parties' negotiations and was unnecessary given that Confluence would have sufficient cashflow.[1197]

In its brief, Staff asserts that Consumers provides little in the way of evidence or analysis to refute Staff's concerns about the merits of a parent guarantee. Instead, Staff notes that the Company dismissed the possibility of a parent guarantee by stating that

[1192] See Consumers brief, 67-68.
[1193] Consumers brief, 68-69.
[1194] Consumers brief, 69.
[1195] Consumers brief, 69.
[1196] Consumers brief, 72.
[1197] Consumers brief, 73.

the transaction is not up for renegotiation, which Staff equates to a negotiating tactic to try to limit any potential conditions on the sale.[1198]

Staff acknowledges that MHRC "raises future contingencies to test Staff's parent guarantee that Staff is not fully able to address" but that Staff nevertheless "believes that [the Parent Guarantee] represents the most reasonable and effective option presented to address the concerns of parties under a potential sale to Confluence."[1199]

Staff also acknowledged concerns regarding the adequacy of Confluence's finances and recommended that "the Commission should consider whether the AG's proposed condition, or some kind of commitment from HSE beyond the ECL, is necessary."[1200]

In her reply, the Attorney General rejects the Company's contention that HSE should not be required to provide additional capital or further commitments to Confluence. The Attorney General argues that HSE has been involved in the sale process, even if behind the scenes, and benefits from the transaction. Further, she states that it is incongruent with both the Company and Confluence's reliance on HSE's experience and investment to show that Confluence is qualified to own the dams given that, without reference to HSE, Confluence would not have a meaningful operational or financial history.[1201] [redacted] [1202] She argues that a more open-ended commitment from HSE

[1198] Staff brief, 49.
[1199] Staff brief, 49.
[1200] Staff brief, 17.
[1201] Attorney General reply, 8.
[1202] Attorney General reply, 8.

is therefore necessary, and that, if PPA revenue is truly sufficient, then HSE's commitment will not result in it providing any additional funding.[1203]

MHRC's reply brief repeats key points highlighting the numerous problems and risks associated with parent guarantees that were already addressed in the testimony of witnesses Lyon, Wedoff, and Jester.[1204]

In its reply, Confluence argues that Staff's proposed parent guarantee should not be adopted because it: (1) is unneeded; (2) jeopardizes the transaction; and (3) exceeds the Commission's authority under MCL 460.6q. Confluence asserts that a parent guarantee is unneeded because it has shown that it has the financial capability to own the dams and that financial and operational concerns are within FERC's purview.[1205] Confluence asserts that the proposed guarantee jeopardizes the deal because Consumers has stated that it would walk away from the deal if such a condition was imposed.[1206] Finally, Confluence contends that the Commission cannot impose conditions, financial or otherwise, on Confluence or HSE because both are nonregulated entities outside of the Commission's authority to regulate.[1207]

c. Analysis and Conclusion

Although this PFD does not recommend approval of the proposed transaction, it provides the following analysis and alternative recommendation should the Commission reach the opposite conclusion.

[1203] Attorney General brief, 8-9.
[1204] MHRC reply, 21-22.
[1205] Confluence reply, 13.
[1206] Confluence reply, 12.
[1207] Confluence reply, 14 (citing *Michigan Cogeneration Venture Ltd Partnership v Pub Serv Comm*, 199 Mich App 286 (1993)).

In theory, the imposition of a parent guarantee appears to alleviate many of the concerns raised about Confluence in sections C and D of this PFD, *supra*, because it would increase financial stability. In practice, however, the proposal presents material concerns that call into question the feasibility and reliability of this type of proposed safeguard.

Any guarantee would have to be carefully crafted to ensure that it is aligned with the terms of the proposed transaction, consistent with all applicable law, and effective at accomplishing its goal under all reasonably foreseeable circumstances. This is no small task, and for a transaction as complex as the one proposed, it is difficult to imagine that an effective and legally sound guarantee could be easily appended as an afterthought, particularly for a proposal with as many parts as the one suggested by Staff. Neither Staff nor the Attorney General have provided the text of any proposed guarantee; instead, each has only provided high-level descriptions of what they wish to accomplish with a guarantee. Accordingly, this PFD cannot examine any proposed guarantee with specificity. But even so, there are several serious concerns, many of which have been raised by intervenors.

First, a financial guarantee is only as reliable as the entity providing it, and it is questionable as to whether the guarantor will have the assets or financial capability to honor the guarantee. Here, it is not clear which party Staff or the Attorney General envisions as the ultimate guarantor (HSE itself or the individual private equity fund that owns Confluence, i.e. Hull Street Energy Partners III, LP). But in either event, it is not certain if either of those entities will have the financial capacity to honor any guarantee if

invoked.[1208] Moreover, even assuming sufficient financial capacity today, the dams could later be sold to an entity lacking such resources thereby negating the effectiveness of the guarantee, a possibility discussed further below.

Second, the problem of enforceability is not addressed by Staff or the Attorney General. If Confluence (and its subsidiaries) are wholly owned and controlled by HSE (or its affiliated entities), and the guarantee is between HSE and Confluence, then it is questionable whether it would ever be invoked if doing so was not in HSE's interest. While there are legal options for third-party enforcement, these options add complications, and this issue has not been raised or addressed by Staff or the Attorney General.

Third, as MHRC witnesses testified, there are multiple ways in which a parent guarantee could be rendered ineffective, intentionally or otherwise. These include situations in which the parent simply lacks sufficient assets, dissipates assets, enters bankruptcy, is sold, or transfers Confluence to another owner. Even if the acquiring entity were to issue a new parent guarantee (which Staff suggests imposing as a required condition of any sale to a new entity), the same deficiencies could arise and defeat its effectiveness. As witness Jester explained, HSE could purposefully create or spin off a new entity not owned by HSE, transfer Confluence to that entity, and designate it as guarantor thereby negating the guarantee's effectiveness if that new entity holds no meaningful assets beyond Confluence itself. The above is not an exhaustive listing of

[1208] Testimony from MHRC witnesses indicated that, through discovery, it obtained information that Hull Street Energy Partners III, LP, had $2.2 billion in equity commitments. However, private equity funds generally use their funding to purchase assets or businesses which may be illiquid, so the existence of such commitments does not necessarily establish that resources would be readily available to backstop a parent guarantee.

ways in which a parent guarantee could be rendered ineffective, and it demonstrates the perils of relying on such a guarantee.

Staff candidly acknowledges that MHRC "raises future contingencies to test Staff's parent guarantee that Staff is not fully able to address[,]" but Staff nevertheless "believes that [the Parent Guarantee] represents the most reasonable and effective option presented to address the concerns of parties under a potential sale to Confluence."[1209] This reasoning is sorely deficient because Staff's own admission underscores that its proposed parent guarantee cannot reliably protect against easily foreseeable risks it should address. Any proposed guarantee that fails to guard against readily foreseeable methods of negating its effectiveness would function as little more than a fig leaf that would offer a flimsy veneer of protection without providing a real substantive safeguard.

Fourth, as this PFD alluded to earlier, the terms of any guarantee would have to be consistent with applicable law and generally compatible with the terms of the proposed transaction (unless the transaction itself is to be fundamentally restructured to accommodate the guarantee). As the Company argued, certain aspects of Staff's proposed guarantee involving reversion of ownership appear to run afoul of the federal bankruptcy code or Michigan law, and other aspects related to dissolution of liabilities could be inconsistent with the terms of the PSA and EIA.[1210] Although this PFD cannot make definitive findings in the absence of specific guarantee language, the legal uncertainties identified cast substantial doubt on the propriety and enforceability of Staff's guarantee as proposed.

[1209] Staff brief, 49.
[1210] See generally Consumers brief, 68-70.

Fifth, Confluence claims that the Commission cannot impose financial conditions on Confluence or HSE because they are nonregulated entities outside of the Commission's jurisdiction. However, the language of MCL 460.6q empowers the Commission to "impose reasonable terms and conditions on the acquisition, transfer, merger, or encumbrance" for the purpose of protecting the regulated utility or its customers.[1211] The statute itself therefore empowers the Commission to impose terms and conditions of approval on the transaction itself, and a parent guarantee from the purchaser (or the purchaser's parent entity) may reasonably be understood as a condition of completing that transaction. Even under Confluence's own reasoning, the Commission could impose a condition on Consumers requiring it to obtain the guarantee from the purchaser's parent company as a prerequisite to proceeding with the sale. Accordingly, this PFD finds Confluence's objection to be without legal merit.

In sum, although the Commission could impose a parent-level financial guarantee, the questions regarding financial capacity of the parent company, enforceability, susceptibility to circumvention, and the legal viability of certain proposed terms lead this PFD to conclude that such a guarantee is unlikely to provide the dependable protection required to address concerns about Confluence's financial capability. Because this PFD does not recommend approval of the proposed transaction, the matter of a guarantee is, for the PFD's purposes, moot.

However, should the Commission approve the sale, it should require a parent-level financial guarantee that addresses and mitigates the concerns identified above. Again,

[1211] MCL 460.6q(8) and (9).

any guarantee that fails to protect against readily foreseeable methods of negating its effectiveness would be a mere fig leaf, and the Commission should not regard such a hollow measure as providing the level of protection envisioned under MCL 460.6q(9) for utility customers.

2. The RDA & and its Economic Loss Payment

a. Testimony

Mr. Blumenstock explained that the Regulatory Disallowance Agreement (RDA) requires the Company to compensate Confluence if the Commission issues a future order disallowing recovery of payments made under the PPA, leading Confluence to terminate the PPA. Upon such termination, Confluence may demand payment under the RDA, and "the Company would be required to pay an amount equal to the lesser of the "Economic Loss Payment" and $250,000,000, plus any outstanding amounts due under the PPA."[1212] Once these payments were made, both parties would generally waive further claims subject to limited rights to sue and counterclaim.[1213]

Mr. DeCooman expressed concerns that the RDA has the potential to limit the Commission's ability to make disallowances for future good cause.[1214] [redacted] [1215] Mr. DeCooman

[1212] 3 Tr 55-56.
[1213] 3 Tr 56.
[1214] 3 Tr 850.
[1215] Conf 3 Tr 1260 (citing Conf Exhibit A-2, p. 35; Conf Exhibit A-1, pp. 534-535).

acknowledged the Company's stance that a future disallowance of PPA payments was unlikely, but was troubled that the Company confirmed that it would recover any required "Economic Loss Payment" from ratepayers.[1216] He contended that such an action would have the effect of discouraging or limiting the ability of the Commission to make future disallowances for good cause. Thus, Mr. DeCooman testified that the Commission should "make it clear that by approving the RDA, it does not guarantee any payments made under the RDA, if triggered, can be recovered from ratepayers.[1217]

Mr. Coppola highlighted how the Company intended to recover the RDA's Economic Loss Payment, if triggered, from its ratepayers. He contended that the Company's ratepayers should not be responsible for such costs, and that the Commission should include such a condition with any approval of the sale transaction.[1218]

In rebuttal, Dr. Lyon opined that the RDA "risks hamstringing and constraining" the Commission's ability to fulfill its role as a regulator by including a penalty payment that can be made by the Company to Confluence if the Commission disallows expenses related to the PPA.[1219]

In rebuttal for Consumers, Mr. Blumenstock stated that the Commission should not categorically deny future cost recovery without a contemporaneous hearing on the reasonableness and prudency of the costs. Further, he opined that it was unlikely that a penalty payment situation would ever arise "given the Commission's long history of not disallowing PPA payments for PPAs that have been previously approved[.]"[1220]

[1216] 3 Tr 853.
[1217] 3 Tr 859.
[1218] 3 Tr 319-320.
[1219] 3 Tr 702.
[1220] 3 Tr 128.

b. Briefing

The Company's briefing opposed this proposal for the same reasons already stated in Mr. Blumenstock's rebuttal testimony.[1221]

Staff asserts that the Company's belief that it is unlikely that the RDA would ever be triggered "should do little to reassure the Commission" and that the RDA can potentially discourage the Commission from making future disallowances for good cause.[1222] Staff gave the Edenville dam as an example where eight years elapsed between FERC issuing a notice of violation and FERC finally revoking the generating license. Staff asserts that if a similar years-long noncompliance situation happened with Confluence, the dams would still be generating power that Consumers would have to pay for under the PPA, and if the Commission disallowed recovery, then Confluence would have the option to trigger the RDA, end the PPA, and seek payments totaling up to $250 million from Consumers, which would in turn seek to recover that sum from its ratepayers.[1223] Staff argues that this situation would place the Commission "in an untenable position where it would either require Consumers ratepayers to cover this payment to Confluence or disallow recovery creating a liability for the Company that could have negative impacts on its overall financial outlook."[1224]

Staff seems to agree with Consumers that the Commission should not categorically deny future cost recovery without a contemporaneous hearing on the reasonableness and prudency of costs, which aligns with Staff's recommendation.

[1221] Consumers brief, 72.
[1222] Staff brief, 12.
[1223] Staff brief, 13.
[1224] Staff brief, 13.

However, Staff warns that this does not mean that the dilemma raised previously is resolved, and that the Commission must weigh whether the benefits of the transaction outweigh any potential harm, which Staff asserts can only be the case if the Commission adopts Staff's recommendations.[1225]

The Attorney General asserts that the Company's arguments are simply inapt, and the Commission should state upfront that payments to Confluence under the RDA are not recoverable from ratepayers because they simply shift all risk of future disallowances onto ratepayers.[1226] She also objects that the terms of the RDA [redacted] which is contrary to the Company's duty to minimize the cost of power.[1227]

In its reply, the Company asserts that its belief that it is unlikely the RDA will be triggered is based upon a sound legal and historical basis because the Commission adheres to the principle that reasonableness and prudence of utility decisions should be evaluated based upon the information available at the time a decision was made, not judged in hindsight.[1228] Consumers states that after diligent research, it only discovered two cases in the Commission's history in which a portion of a PPA was ever disallowed after the Commission previously approved the PPA; further, the circumstances of those cases were unique and easily distinguishable from the current proposed transaction.[1229]

[1225] Staff brief, 14.
[1226] Attorney General brief, 47.
[1227] Attorney General brief, 47 (citing October 31, 2021 order in Case No. U-20220, p. 31).
[1228] Consumers reply, 37-38 (citing several past Commission cases and Court of Appeals cases to illustrate this anti-hindsight approach to evaluating reasonableness and prudence).
[1229] Consumers reply, 39. These cases that the Company identified were Case No. U-8871 (disallowing part of a PPA payment because of Consumers Energy's failure to comply with a previous order limiting the amount of a capacity charge) and Case No. U-20530 (disallowing a portion of PPA payments between Indiana-Michigan Power Co. and its affiliate the Ohio Valley Electric Corporation when the agreement was

Consumers explained that the only example of a potential future disallowance offered by Staff could occur if FERC found a dam to be persistently in violation of its operating license for years while the dam still generated power paid for through the PPA. But the Company asserted this would not be a concern for two reasons. [redacted] [1230] Second, even if the Company continued to pay Confluence for energy under those circumstances, customers would still receive the value of the energy, would not suffer any harm, and PPA payments would reduce any potential economic loss Confluence would suffer as a result of the disallowance thereby reducing the magnitude of any termination payment under the RDA.[1231]

c. Analysis and Conclusion

Although this PFD does not recommend approval of the proposed transaction or PPA, it provides the following analysis and alternative recommendation should the Commission decide otherwise.

The Company is correct that it seems unlikely that the Commission would make a future disallowance related to the PPA given the legal standard for doing so and its past practices. Nevertheless, Staff and the Attorney General are correct that the RDA could

not pre-approved at its inception by the Commission and it violated the pricing provisions of the Commission's code of conduct).

[1230] Consumers reply, 40.

[1231] Consumers reply, 41.

potentially put the Commission in an untenable situation because it can shift the financial risk of future disallowances onto ratepayers.

Thus, if the Commission approves the transaction, it should impose the condition suggested by the Attorney General, i.e. that payments under the RDA, if triggered, are not recoverable from the Company's ratepayers. If it is as unlikely that the RDA will be triggered as the Company suggests [redacted] then the risk of any future disallowance should fall on the Company rather than its ratepayers. Simply put, because the RDA arises from a negotiated arrangement that the Company played a central role in shaping, the financial risk associated with it should fall on the Company rather than ratepayers.

3. Community Engagement Plan

a. Testimony

Mr. DeCooman proposed that, to ensure continued public access and good public relations, the Commission should require Confluence to submit a community engagement plan to this docket within 120 days after the Commission issues an Order in this case. He opined that the community engagement plan should require Confluence to: (1) maintain all current public access points or public amenities at the dams to the extent required under its FERC license and is feasible; (2) create and maintain a website, physical mailing location, and email address to allow the pubic to submit comments and questions to

Confluence; and (3) announce any long-term changes to public access points or amenities on the aforementioned website.[1232]

In rebuttal, Mr. Blumenstock testified that Consumers has no reason to believe that Confluence would agree to the proposed terms relating to a community engagement plan. He added that the proposal is unreasonable because: (1) a future unknown situation may require a change in public access, but no such changes are currently known; (2) Confluence has stated it has no plans to change public access; (3) FERC's oversight already includes a goal of maintaining public access and changes would need to be approved by FERC; and (4) Confluence will already have an office in Michigan and a digital presence.[1233]

b. Briefing

The Company objects that Staff's community engagement proposal creates a post-order obligation and ongoing commitments unrelated the requirements of MCL 460.6q. Consumers states that these proposed conditions "invade FERC's regulatory authority and is inconsistent with the Commission's authority under MCL 460.6q(8) and (9) to impose conditions that protect the utility or its customers because these proposals do neither.[1234] Consumers contends that these conditions are outside the scope of the Commission's authority and risk unraveling the transaction itself.[1235]

Confluence's reply brief argues that these conditions should not be imposed because Consumers stated it would walk away from the transaction if such conditions are

[1232] 3 Tr 858-859.
[1233] 3 Tr 89 (citing Exhibits A-33, A-34, A-35, and A-29).
[1234] Consumers brief, 70.
[1235] Consumers brief, 70.

imposed.[1236] Confluence also asserts that these conditions are unnecessary because it has stated it has no plans to change public access, has committed to maintaining an office in Michigan, and has a digital presence.[1237] Finally, Confluence contends that the Commission lacks statutory authority to impose conditions on it or on HSE because they are nonregulated entities outside of the Commission's authority to regulate.[1238]

c. Analysis and Conclusion

Although this PFD does not recommend approval of the proposed transaction, it provides the following analysis and alternative recommendation should the Commission reach the opposite conclusion.

If the Commission approves the proposed transaction, it should impose the community engagement plan condition suggested by Staff. As an initial note, it is odd that the Company and Confluence object to Staff's community engagement plan largely on the basis that Confluence already intends to take substantially similar actions. But in any event, the conditions proposed by Staff do not appear unreasonable. While the Company suggests that Staff's proposal invades FERC's jurisdiction, this PFD reads Staff's recommendation as requiring Confluence to maintain existing public access points and amenities to the same extent as required by FERC.[1239] Rather than invading FERC's jurisdiction, this seems to require Confluence to comply with its FERC license, which, if anything, is merely redundant.

[1236] Confluence reply, 12.
[1237] Confluence reply brief, 12-13 (citing Exhibits A-33, A-34, A-29, and A-35).
[1238] Confluence reply, 14 (citing *Michigan Cogeneration Venture Ltd. Partnership v Public Service Commission*, 199 Mich App 286 (1993)).
[1239] See 3 Tr 858.

Consumers argues that the community engagement plan does not comply with MCL 460.6q(8) and (9) because it does not protect the utility or its customers. However, the engagement plan protects customers by ensuring that they will continue to have the ability to easily communicate with the new owner, Confluence, and will be informed about any changes to public access points. While Confluence again contends that the Commission cannot impose conditions on it as a non-regulated entity, this argument was already addressed in relation to the parent guarantee, see Section E(1) of this PFD, *supra*.

4. EIA Agreement and an Environmental Liabilities Cost Shield

a. Testimony

Mr. Coppola recounted that the Environmental Indemnity Agreement (EIA) requires Confluence to provide and maintain $2.5 million as security and maintain $50 million of pollution legal liability insurance for a minimum of 10 years; however, he asserted that these funds may not be sufficient to meet all obligations in the event that large environmental liabilities arise from mismanagement or other events.[1240] Thus, he recommended requiring HSE to provide a full and unconditional guarantee of the indemnity obligations of Confluence under the EIA.[1241] Mr. Coppola testified that if Confluence or HSE fail to make payment on any environmental liabilities or other obligations, then Consumers should not be allowed to recover those costs from its customers.[1242]

[1240] 3 Tr 318.
[1241] 3 Tr 318.
[1242] 3 Tr 318, 323.

In rebuttal, Mr. Blumenstock opined that the Commission should not categorically deny future cost recovery without a contemporaneous hearing on the reasonableness and prudency of the costs. He explained that if any such circumstance ever arises, which he opined was doubtful given the terms of the EIA, then the Company would present its rationale for cost recovery, and the Commission could decide at that time.[1243]

b. Briefing

The Company's briefing opposed this proposal for the same reasons already stated in Mr. Blumenstock's rebuttal testimony.[1244]

Staff's brief notes that the Attorney General's proposed guarantee of performance under the EIA would be insufficient to address all of Staff's concerns because it is limited to liabilities covered under the EIA and does not address the potential for some of the hydro fleet to be transferred to a non-affiliated third party. Accordingly, Staff instead recommended approval of its more comprehensive parent guarantee.[1245]

The Attorney General's brief mostly repeats the assertions made by Mr. Coppola in his direct testimony.[1246] She adds that there is no need for a hearing to determine whether Consumers can pass Confluence's unwanted costs onto customers because those costs should already be covered by the above-market PPA rate and customers had no ability to protect themselves in the negotiations. Therefore, the Company, not ratepayers, should bear these costs, and the Commission should clearly state in its order that they are not recoverable.[1247]

[1243] 3 Tr 124.
[1244] Consumers brief, 72.
[1245] Staff brief, 11.
[1246] Attorney General brief, 42-45.
[1247] Attorney General brief, 45.

c. Analysis and Conclusion

Although this PFD does not recommend approval of the proposed transaction, it provides the following analysis and alternative recommendation should the Commission reach the opposite conclusion.

If the Commission approves the transaction, it should require a guarantee of Confluence's obligations under the EIA. However, as Staff suggests, that is more aptly considered within the context of a broader parent-level guarantee as proposed by Staff, which is addressed in Section E(1) of this PFD, *supra*. This PFD also agrees with the Attorney General's recommendation to impose a condition that if Confluence fails to make payment on environmental liabilities or obligations, Consumers should not be allowed to recover those costs from ratepayers. One of the ostensible benefits of the proposed transaction is that it ostensibly relieves Consumers (and thus its ratepayers) of future liabilities, and this benefit would be rendered illusory if Confluence's failure to make payment on future environmental liabilities merely gets passed back to ratepayers.

5. Excluded Liabilities Review

a. Testimony

Mr. Coppola explained that Section 9.2 of the PSA requires the Company to indemnify Confluence for any "Excluded Liabilities," which is defined under Section 2.1(d) of the PSA to include various items such as liabilities related to assets retained by the Company or on easements reserved by the Company, employee benefit plan matters, contract defaults, the Company's share of certain of taxes, etc.[1248] Mr. Coppola asserted

[1248] 3 Tr 317.

that if Consumers makes payments to Confluence for Excluded Liabilities, then those payments should be subject to reasonableness and prudence review.[1249]

Mr. Blumenstock opined that this proposed condition was unnecessary because the Company believed that the law already requires a reasonableness and prudency review if Consumers seeks recovery for payments to Confluence for excluded liabilities in utility rates.[1250]

b. Briefing

The Company's briefing opposed this proposal for the same reasons already stated in Mr. Blumenstock's rebuttal testimony.[1251]

The Attorney General's brief simply repeats the assertions made by Mr. Coppola regarding this proposed condition.[1252]

c. Analysis and Conclusion

Although this PFD does not recommend approval of the proposed transaction, it provides the following analysis and alternative recommendation should the Commission reach the opposite conclusion.

If the Commission approves the transaction, it should impose the condition suggested by the Attorney General to require a reasonableness and prudence review of any payments made for excluded liabilities. It is again curious that the Company objects to a condition on the basis that it believes the law will already require a reasonableness and prudency review. But in any event, this PFD agrees with the Attorney General that

[1249] 3 Tr 324.
[1250] 3 Tr 124.
[1251] Consumers brief, 72-73.
[1252] Attorney General brief, 42-43.

any such excluded liabilities payments should be reviewed for reasonableness and prudence if they are incurred and if the Company seeks their recovery from ratepayers.

6. PPA Re-Approval After Future Sale of Dams

a. Testimony

Mr. Coppola asserted that the Commission should include a condition stating that if any of the 13 dams are sold to a non-affiliated party of HSE, or a party for which HSE has less than 50% ownership or control, the PPA will need to be approved again by the Commission to ascertain that it is still appropriate.[1253]

[redacted][1254]

[redacted][1255]

In rebuttal, Mr. Blumenstock asserted that neither Consumers nor Confluence was willing to renegotiate the terms of the sale. He added that this condition is not necessary because FERC will have oversight of any license transfer and will ensure that the new owner would be a safe operator.[1256] [redacted][1257] [redacted]

[1253] 3 Tr 324.
[1254] Conf 3 Tr 1088 (citing, in part, Conf Exhibit AG-15).
[1255] Conf 3 Tr 1088.
[1256] 3 Tr 126.
[1257] Conf 3 Tr 1019.

[redacted][1258]

[redacted][1259]

b. Briefing

The Company's briefing opposed this proposal for the same reasons already stated in Mr. Blumenstock's rebuttal testimony.[1260]

The Attorney General's brief asserts that the Company's statements that the Company is unwilling to renegotiate and that FERC will still have safety oversight has nothing to do with the relevant terms of the PPA. In response to the Company's argument about the structure and terms of the PPA, she argues that Consumers avoids admitting that the $160/MWh PPA rate is tied to Confluence taking on all operating, capital, and liability responsibilities for the full fleet of 13 hydro facilities, and that this structure breaks down if any facilities are later sold. Therefore, the Commission must retain oversight of the PPA to ensure that any future sale does not disadvantage customers and that a new owner can meet the same commitments.[1261]

[1258] Conf 3 Tr 1019.
[1259] Conf 3 Tr 1019.
[1260] Consumers brief, 73-74.
[1261] Attorney General brief, 41-42.

c. Analysis and Conclusion

Although this PFD does not recommend approval of the proposed transaction or PPA, it provides the following analysis and alternative recommendation should the Commission reach the opposite conclusion.

The exact parameters of the Attorney General's proposal are somewhat unclear.[1262] The proposal could be read as requirement that the Commission would have to approve the PPA between Consumers and the new owner of a dam that was sold by Confluence. If interpreted in that manner, this PFD agrees with the Company that it would be a redundant recommendation because that would already be a new PPA subject to Commission approval.

The proposal could more aptly be interpreted to require Confluence to resubmit, for Commission approval, the PPA between Consumers and Confluence if Confluence were to sell one or more of the dams. This PFD recommends that the Commission adopt this condition for the reasons articulated by the Attorney General. If Confluence transfers any of the dams to another entity, then the existing PPA should be reassessed to ensure that its pricing and other terms remain appropriate under the new ownership structure. Although the Company asserts that its payments to Confluence would decrease proportionally,[1263] the Commission should retain the opportunity to reexamine the PPA to confirm that its pricing terms remain reasonable and prudent considering the altered circumstances that would accompany any divestment. This review is necessary to

[1262] See Attorney General brief, 40.
[1263] See Exhibit AG-23, p 3.

prevent a potential mismatch between the escalating PPA rate and the operational and financial obligations that would remain with Confluence after it sold off any of the dams.

7. Uneconomic Dispatch & Negative Locational Marginal Price Conditions

a. Testimony

Mr. Coppola contended that: (1) If the hydro plants are not dispatched due to uneconomic dispatch, Consumers should not have any obligation to make payments to Confluence; and (2) Confluence should assume all risks for negative locational marginal prices (LMPs) in the MISO market such that Consumers will have no obligation to reimburse or pay Confluence for costs paid to MISO for non-delivery of energy.[1264]

[redacted][1265]

[redacted][1266]

[redacted][1267]

Mr. Blumenstock reiterated that neither Consumers nor Confluence were open to renegotiating the terms of the sale. Regarding uneconomic dispatch and negative LMPs, he explained that river hydro generation "has not been dispatched in response to energy

[1264] 3 Tr 324.
[1265] Conf 3 Tr 1086.
[1266] Conf 3 Tr 1087.
[1267] Conf 3 Tr 1086.

market conditions because the generation must be operated to adhere to run-of-river operational requirements, which are aimed at keeping consistent water levels."[1268]

b. Briefing

The Company's briefing opposed these proposed conditions for the same reasons already stated in Mr. Blumenstock's rebuttal testimony.[1269]

Similarly, the Attorney General's briefing largely reiterates the points raised in Mr. Coppola's direct testimony.[1270]

c. Analysis and Conclusion

Although this PFD does not recommend approval of the proposed transaction, it provides the following analysis and alternative recommendation should the Commission reach the opposite conclusion.

If the Commission approves the transaction, it should impose the conditions proposed by the Attorney General related to uneconomic dispatch and LMPs. While these concerns may not necessarily be pressing for the reason stated the Company, i.e. run-of-the-river operation for the hydro fleet, it is still true that Consumers and its ratepayers should not bear such risks. While this PFD would generally be concerned that such conditions could potentially have a negative effect on Confluence's financial stability, that concern is better remedied through the parent-level guarantee discussed in Section E(1) of this PFD, *supra*.

[1268] 3 Tr 127.
[1269] Consumers brief, 74.
[1270] Attorney General brief, 39-40.

8. PPA Rate Adjustment for Cost Overruns

a. Testimony

Mr. Coppola testified that the Commission should condition the sale upon the requirement that the PPA rate of $160 will not be adjusted upward for cost overruns pertaining to the construction of the Hardy and Rogers spillways or other projects.[1271] [redacted][1272] [redacted][1273]

Mr. Blumenstock repeated that Consumers and Confluence would not entertain changes to the transaction, [redacted][1274]

b. Briefing

The Company's briefing opposed this proposal for the same reasons already stated in Mr. Blumenstock's rebuttal testimony.[1275]

Similarly, the Attorney General's brief mostly reiterates the points addressed in Mr. Coppola's direct testimony.[1276] [redacted]

[1271] 3 Tr 324.
[1272] Conf 3 Tr 1084-1085.
[1273] Conf 3 Tr 1085.
[1274] Conf 3 Tr 1021.
[1275] Consumers brief, 74.
[1276] See Attorney General brief, 37-38.

[redacted][1277] Accordingly, she contends that her argument remains generally unrebutted.[1278]

c. Analysis and Conclusion

Although this PFD does not recommend approval of the proposed transaction, it provides the following analysis and alternative recommendation should the Commission reach the opposite conclusion.

If the Commission approves the transaction, it should impose the conditions related to cost overruns for the reasons suggested by the Attorney General. It is generally incongruous to sell the dams and still require ratepayers to potentially be on the hook for certain cost overruns associated with known work at the facilities. Confluence, rather than ratepayers, should bear the risk of such cost overruns.

9. Employee Retention & Closing Costs Adjustment

a. Testimony

Mr. Monroe testified that all salaried hydro employees, and union employees who do not choose to stay with Consumers Energy, will transfer to Confluence at closing, and additional staff will be hired to support the transition. Consumers proposed deferring about $4.9 million in incremental costs for onboarding these new employees and later recovering the net amount through rates after the sale.[1279] Mr. Monroe testified that, to ensure the retention of the river hydro employees through the sale closing date, the union

[1277] Attorney General brief, 38-39.
[1278] Attorney General brief, 39.
[1279] 3 Tr 177.

and salaried employees would receive bonuses totaling up to 150% of their salary plus additional severance pay.[1280]

Mr. Coppola testified that Consumers should be required to exclude the following amounts for recovery from transaction and closing costs: $6.4 million for employee retention bonuses, severance payments, and restricted stock, $4.9 million for additional employee costs, and $1.6 million for internal closing costs.[1281]

He explained that his proposed adjustment allowed for an employee retention bonus of 100% of annual wages (instead of 150% proposed by Consumers) and disallowed $112,633 in restricted stock payments because those have been disallowed in the Company's general rate cases.[1282] [redacted][1283] Mr. Coppola emphasized that the proposed transaction generally allows the Company's employees to keep their current job at the same location by transferring to Confluence, or to stay with the Company but with a different job such that their livelihoods are not in danger.[1284] He testified that even after paring back retention and severance payments by $6.4 million, employees would still receive a total of $8.1 million.[1285]

Regarding additional employee costs, he explained that the Company identified $4.9 million for several vacant positions it wished to fill before transferring the employees

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[1280] 3 Tr 178-179.
[1281] 3 Tr 324-325.
[1282] 3 Tr 303.
[1283] Conf 3 Tr 1075.
[1284] 3 Tr 301.
[1285] 3 Tr 303.

to Confluence.[1286] Mr. Coppola asserted that these employees will benefit Confluence, and that if it wishes employees hired and trained before the transfer date then it should bear that cost rather than the Company's ratepayers.[1287]

Finally, Mr. Coppola explained that the Company identified closing costs that included, among other items, $1.6 million for internal labor costs. He contended that Company witnesses filing testimony in this case and involved in the sale transaction are already employees whose salaries are recovered through rates, and no evidence has been furnished to show that these are incremental costs not already covered by rates.[1288]

In rebuttal, Mr. Monroe disagreed with Mr. Coppola's position stating that the retention benefits are "reasonable, prudent costs that are consistent with what Consumers Energy has offered in prior facility closures."[1289] He specified that Consumers views the sale as akin to a closure for the purposes of union contracts because the company will be closing its river hydro headquarters and that division will no longer exist within Consumers Energy.[1290] He asserted that supplemental staffing costs are necessary to ensure that an adequate and safe workforce is in place at the time the deal closes.[1291] He explained that the additional staff are needed to backfill operator roles vacated by employees that are retiring or that have opted to stay with Consumers rather than transfer to Confluence.[1292] Mr. Monroe stated that the additional staffing costs will be charged to

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[1286] 3 Tr 304.
[1287] 3 Tr 304.
[1288] 3 Tr 305.
[1289] 3 Tr 182.17.
[1290] 3 Tr 182.17.
[1291] 3 Tr 182.17.
[1292] 3 Tr 182.18.

the hydro sale regulatory account and will be recovered as part of the overall transaction.[1293]

In his rebuttal regarding internal labor costs, Mr. Blumenstock opined that they should be recoverable because they were incurred for the sole reason of supporting the sale transaction and such support work was incremental to the normal duties of the Company's employees.[1294]

b. Briefing

The Company argues that the Commission should reject the Attorney General's proposals regarding employee retention benefits and hiring costs largely for the same reasons stated in the direct and rebuttal testimony of its witnesses.[1295] However, the Company adds that Mr. Coppola is wrong to conclude that the additional employees hired will benefit Confluence because, due to the nature of the transaction, it benefits the customers and residents of Michigan if the dams are fully staffed at the time of the sale.[1296]

The Attorney General's briefing addresses these issues primarily by recapping the arguments advanced by Mr. Coppola in his direct testimony.[1297]

[1293] 3 Tr 182.19.
[1294] 3 Tr 132.
[1295] Consumers brief, 56-57, 74-75.
[1296] Consumers brief, 57.
[1297] See Attorney General brief, 22-28.

c. Analysis and Conclusion

Although this PFD does not recommend approval of the proposed transaction, it provides the following analysis and alternative recommendation should the Commission reach the opposite conclusion.

If the Commission approves the transaction, it should adopt the employee retention, closing cost, and internal labor cost adjustments proposed by the Attorney General for the reasons stated by the Attorney General.

10. Value of Consumers' Office Buildings Included in Sale

a. Testimony

Mr. Coppola explained that in discovery the Company confirmed that office buildings associated with the Hardy, Five Channels, and Tippy dams will be transferred to Confluence and are included in the $13 paid by Confluence for the sale of the facilities. He contended that this was not reasonable because the office buildings have value separate from the hydro facilities.[1298] Mr. Coppola asserted that Confluence should either be required to (1) pay Consumers separately and incrementally for the market value of the office buildings, or (2) enter into long-term market-based lease agreements to occupy those buildings.[1299]

In response, Mr. Blumenstock repeated that Consumers and Confluence would not renegotiate the transaction, and he added that the office buildings were part of this arms-length sale and were factored into the sale price.[1300]

[1298] 3 Tr 306.
[1299] 3 Tr 325.
[1300] 3 Tr 129-130.

b. Briefing

The Company's briefing opposed this proposal for the same reasons already stated in Mr. Blumenstock's rebuttal testimony.[1301]

Similarly, the Attorney General's brief reiterates the testimony of witness Coppola to support her position.[1302] The Attorney General's reply maintains that "the no cost use of the buildings is a windfall for Confluence and therefore unreasonable."[1303]

c. Analysis and Conclusion

Although this PFD does not recommend approval of the proposed transaction, it provides the following analysis and alternative recommendation should the Commission decide otherwise.

If the Commission approves the transaction, it should not impose this condition related to office buildings associated with three of the dams. All buildings have intrinsic value, but the location of these offices in relatively remote areas and in very close proximity to the dams is suggestive of the fact that their value is primarily tied to the operation of the dams themselves. Accordingly, this PFD does not see a problem with the inclusion of the office buildings as part of the nominal sale price as it seems unlikely that their inclusion is truly a significant windfall as suggested by the Attorney General.

F. Integrated Analysis and Recommended Decision

1. Overall Position of the Parties

Consumers asserts that the Commission should approve the proposed transaction and find that it will have a favorable effect on customer rates compared to alternatives,

[1301] Consumers brief, 75.
[1302] Attorney General brief, 28-29.
[1303] Attorney General reply, 7.

maintains the ability to provide safe electrical service, and is aligned with public interest. Consumers states it will reject any conditions on the sale proposed by Staff or the Attorney General and would instead exercise its rights under MCL 460.6q(8) and (9) by declining to proceed and instead would move forward with decommissioning the dams.[1304]

Confluence similarly argues that the proposed transaction satisfies all the criteria of MCL 460.6q(7) and has no adverse impact on rates, safety, or public policy such that the Commission should approve the proposed transaction.[1305]

Staff's business case analysis generally agreed with the Company that the proposed transaction had the least cost risk. However, given various other serious concerns about the transaction, Staff states that approval should be conditioned upon the additional conditions proposed by Staff with a requirement for the Company to expressly accept such conditions prior to finalizing the transaction with Confluence.[1306]

The Attorney General, similarly to Staff, generally agrees that the proposed transaction is the lowest cost option. However, given her serious concerns with other aspects of the transaction, she recommends that the proposed transaction should be conditioned upon the Company accepting all 13 of the recommendations she proposed, and that absent these conditions, the sale should be rejected.[1307]

The DNR concludes that the proposed transaction should be rejected because it is not in the public's best interest, threatens public safety, and is not the lowest cost option such that Consumers failed to meet burden under MCL 460.6q.[1308]

[1304] Consumers brief, 66-67, 76
[1305] See generally Confluence brief, 5-11.
[1306] Staff brief, 56, 72.
[1307] Attorney General brief, 58-60.
[1308] DNR brief, 33.

ABATE contends that the Commission should not approve the proposed transaction and should instead adopt its analysis showing that the proposed transaction is the most expensive option.[1309]

MHRC requests that the Commission reject the proposed transaction because it is the mostly costly among the alternatives, will have an adverse effect on the safe provision of energy services, is not aligned with public interest, and its approval would be contrary to Michigan law.[1310]

Croton Township, Big Prairie Township, and LAA all support approval of the proposed transaction because they believe it to be consistent with public interest as a viable path to prevent decommissioning and retain the impoundments which create economic and recreational benefits for their local communities.[1311]

2. Final Recommendation

It is the overall recommendation of this PFD that the Commission should reject the proposed transaction.

This PFD analyzed the factors stated at MCL 460.6q(7)(a), (b), and (e) in Sections B, C, and D of this PFD, *supra*, and that analysis is incorporated herein by reference. Further, this PFD concludes that the factors stated in MCL 460.6q(7)(c) and (d) are inapplicable for the reasons stated by the Company.[1312] After analyzing the statutory

[1309] ABATE brief, 1, 29.
[1310] MHRC brief, 79-80.
[1311] LAA brief, 5; Croton/Big Prairie Township brief, 6.
[1312] See Consumers brief, 58-59.

factors and considering the totality of the circumstances, the proposed transaction has an inconclusive effect on rates compared to alternatives given the state of the evidentiary record, has an adverse impact on the safe provision of energy service, and is inconsistent with the public interest. Additionally, the proposed PPA, which operates as the cornerstone of the proposed transaction, is highly problematic and would set a negative precedent such that it should be rejected as unreasonable and imprudent for the reasons stated in Section B(3)(c) of this PFD, *supra*.

Further, while Staff and the Attorney General proposed terms and conditions to alleviate concerns about the transaction, discussed in Section E, *supra*, Consumers preemptively rejected them.[1313] This PFD therefore concludes that it would be futile to condition the transaction on terms and conditions that Consumers has already rejected. In any event, a touchstone condition for any approval would be a parent-level financial guarantee as it could theoretically alleviate many concerns about the transaction. However, for the reasons stated in Section E(1)(c), *supra*, this PFD is skeptical that such a guarantee could truly and effectively relieve the full range of concerns that are raised by Staff and the other intervening parties. Accordingly, this PFD recommends that the proposed transaction should simply be rejected.

[1313] See Consumers brief, 66-67.

V.

CONCLUSION

Based on the foregoing discussion, this PFD recommends that the Commission reject the proposed transaction and adopt the findings, conclusions, and recommendations set forth above.

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
For the Michigan Public Service Commission

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James M. Varchetti
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