

124 West Allegan Street, Suite 1000  
Lansing, Michigan 48933  
T (517) 482-5800 F (517) 482-0887  
www.fraserlawfirm.com

Douglas J. Austin	Jennifer Utter Heston	Jean E. Kordenbrock	Retired
Michael E. Cavanaugh	Marlaine C. Teahan	Melisa M. W. Mysliwiec	Donald A. Hines
Gary C. Rogers	Mark E. Kellogg	Emily M. Vanderlaan	John J. Loose
Michael H. Perry	Ryan K. Kauffman	Amanda S. Wolanin	David E. S. Marvin
Thomas J. Waters	Paula J. Manderfield		Mary M. Moyne
Michael S. Ashton	Paul V. McCord	OF COUNSEL	Archie C. Fraser (1902-1998)
H. Kirby Albright	Brian T. Gallagher	Stephen L. Burlingame	Everett R. Trebilcock (1918-2002)
Graham K. Crabtree	Jonathan T. Walton, Jr.	Mark A. Bush	James R. Davis (1918-2005)
Michael P. Donnelly	Laura S. Faussié	David S. Fry	Ronald R. Pentecost (1932-2008)
Edward J. Castellani	Norbert T. Madison, Jr.	Max R. Hoffman	Mark R. Fox (1953-2011)
Jonathan E. Raven	Aaron L. Davis	Darrell A. Lindman	
Peter D. Houk	Paul C. Mallon, Jr.	Thomas L. Sparks	
Elizabeth H. Latchana	Jared A. Roberts	Brandon W. Zuk	
Thaddeus E. Morgan	David J. Houston		Peter L. Dunlap, P.C.
Brian P. Morley	Shaina R. Reed		

mashton@fraserlawfirm.com  
(517) 377-0875

April 17, 2020

Ms. Lisa Felice, Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Hwy.  
Lansing, MI 48917

RE: MPSC Docket No. U-20763  
Enbridge Energy, Limited Partnership

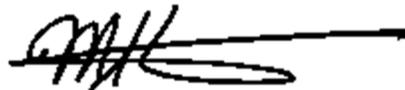
Dear Ms. Felice:

Attached herewith for filing in the above-referenced matter, please find the **Application for the Authority to Replace and Relocate the Segment of Line 5 Crossing the Straits of Mackinac into a Tunnel Beneath the Straits of Mackinac, if Approval is Required Pursuant to 1929 PA 16; MCL 483.1 et seq. and Rule 447 of the Michigan Public Service Commission's Rules of Practice and Procedure, R 792.10447, or the Grant of other Appropriate Relief.**

If you have any questions or concerns with the attached please do not hesitate to contact me.

Very truly yours,

**Fraser Trebilcock Davis & Dunlap, P.C.**



Michael S. Ashton

MSA/ab  
Attachment  
Cc: All counsel of record

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

**IN RE ENBRIDGE ENERGY, LIMITED )  
PARTNERSHIP )**

**Case No. U-20763**

**Application for the Authority to Replace )  
and Relocate the Segment of Line 5 )  
Crossing the Straits of Mackinac into a )  
Tunnel Beneath the Straits of Mackinac, if )  
Approval is Required Pursuant to 1929 PA )  
16; MCL 483.1 *et seq.* and Rule 447 of the )  
Michigan Public Service Commission’s )  
Rules of Practice and Procedure, R )  
792.10447, or the Grant of other )  
Appropriate Relief )**

**I.**  
**INTRODUCTION**

1. Pursuant to 1929 PA 16; MCL 483.1 *et seq.* and Rule 447 of the Commission’s (“MPSC” or “Commission”) Rules of Practice and Procedure, R 792.10447, Enbridge Energy, Limited Partnership (“Enbridge” or “Applicant”), hereby respectfully requests, to the extent required by law, that the Commission grant Enbridge the authority for its project known as the Straits Line 5 Replacement Segment (the “Project”). In the alternative, as discussed further below, Enbridge seeks a ruling confirming that it already has the requisite authority from the Commission to construct the replacement segment of Line 5 that is the subject of this Application.

2. The purpose of the Project is to alleviate an environmental concern to the Great Lakes raised by the State of Michigan relating to the approximate four miles of Enbridge’s Line 5 that currently crosses the Straits of Mackinac (“Straits”). Line 5 is a fully operational 645-mile interstate pipeline, and the approximate four-mile segment that crosses the Straits

lies on top of the lakebed with the exception of portions buried near each shoreline. The Project involves relocating underground the portion of Line 5 that crosses the Straits, within a tunnel to be located at a depth of approximately 60 feet to 250 feet beneath the lakebed of the Straits. Enbridge and the State of Michigan have entered into a series of agreements relating to, and facilitating, the relocation of this portion of Line 5 within such a tunnel. The Michigan Legislature has enacted 2018 PA 359 (“Act 359”) to create a state authority known as the Mackinac Straits Corridor Authority (“MSCA”) and delegated the MSCA with authority to enter agreements pertaining to the construction, operation, and maintenance of the tunnel to house the replacement pipe segment.<sup>1</sup>

3. To the extent required by law, this Application seeks Commission approval for the Project, which will replace the current crossing — consisting of two, 20-inch diameter pipes referred to as the Dual Pipelines — with a single, 30-inch diameter pipe (the “replacement pipe segment”) located within a concrete-lined tunnel below the lakebed of the Straits. In addition to locating the replacement pipe segment within the tunnel, the Application seeks approval to operate and maintain the replacement pipe segment as part of Line 5. Enbridge also proposes to tie-in, operate, and maintain approximately 0.4 to 0.8 miles of pipe to connect the replacement pipe segment to Enbridge’s existing Line 5 on both sides of the Straits. The Project will also include all the associated fixtures, structures, systems, coating, cathodic protection and other protective measures, equipment and appurtenances relating to the replacement pipe segment and connection to the existing Line 5 pipeline on both sides of the Straits. The Project does not include the tunnel itself, which is the subject of separate applications addressed to other state and federal agencies as described further below.

---

<sup>1</sup> The Michigan Court of Claims held on October 31, 2019 that Act 359 is constitutional, confirming the validity and enforceability of various agreements relating to the tunnel. *Enbridge Energy, Limited Partnership, et al. v. State of Michigan, et al.*, Case No. 19-000090-MZ (Oct. 31, 2019). The Attorney General appealed that decision, and that appeal remains pending before the Michigan Court of Appeals. *Enbridge Energy, Limited Partnership, et al. v. State of Michigan, et al.*, Court of Appeals No. 351366.

4. This Project will allow for the discontinuation of service on the Dual Pipelines upon placing in service the replacement pipe segment within the tunnel. (The actual decommissioning of the Dual Pipelines will occur pursuant to an agreement titled “Third Agreement between the State of Michigan, Michigan Department of Environmental Quality, and Michigan Department of Natural Resources and Enbridge Energy, Limited Partnership, Enbridge Energy Company, Inc. and Enbridge Energy Partners, L.P.,” and the 1953 Easement that is administered by the Michigan Department of Natural Resources (“MDNR”), which authorizes the Dual Pipelines to be located within the Straits.

5. The tunnel will be designed, constructed and maintained pursuant to the “Tunnel Agreement” entered between the MSCA and Enbridge pursuant to Act 359. The Tunnel Agreement provides for the replacement pipe segment to be located in the tunnel. The tunnel will be constructed in the subsurface lands beneath the lakebed of the Straits within the easement issued by MDNR to the MSCA, and the assignment of certain rights under that easement by the MSCA to Enbridge. The tunnel will be constructed in accord with all required governmental permits and approvals. As noted, this Application does not seek authorization to design, construct, or operate the tunnel.

6. The placement of the pipeline within the tunnel eliminates the possibility of release into the Great Lakes caused by a vessel anchor strike, which was a concern raised by the State of Michigan. The pipeline being located underground, within a tunnel and located at a depth of approximately 60 feet to 250 feet beneath the lakebed, will further protect the aquatic environment against the remote possibility of a release caused by another event.

**II.  
NAME AND ADDRESS OF APPLICANT**

7. Pursuant to the requirement in Rule 447(2)(a), the name of the Applicant is Enbridge Energy, Limited Partnership, a Delaware limited partnership authorized to do business in the State of Michigan, which is headquartered at 5400 Westheimer Court, Houston, TX 77056.

8. In this proceeding, Enbridge will be represented by the following individuals and firm:

Michael S. Ashton Shaina R. Reed
Fraser Trebilcock Davis & Dunlap, P.C.
124 West Allegan, Suite 1000
Lansing, Michigan 48933
<a href="mailto:mashton@fraserlawfirm.com">mashton@fraserlawfirm.com</a> <a href="mailto:sreed@fraserlawfirm.com">sreed@fraserlawfirm.com</a>

**III.  
OVERVIEW OF APPLICANT AND LINE 5**

**A. Overview of Enbridge and the Lakehead System**

9. Enbridge is an interstate common carrier pipeline company, which as relevant here provides transportation service to qualified shippers of liquid petroleum in accordance with conditions of service, rates and product quality as posted in its tariffs filed with the Federal Energy Regulatory Commission and as nominated on a month-to-month basis from its qualified shippers.

10. Enbridge owns and operates the Lakehead System, the U.S. portion of an operationally integrated pipeline system located within Canada and the United States. The Lakehead System operates in seven Great Lakes states and spans approximately 1,900 miles from the international border near Neche, North Dakota, to the international border near Marysville, Michigan. Enbridge also operates an extension from facilities in Canada into the Buffalo, New York area. Line 5 is operationally integrated within the Lakehead System.

**B. Line 5 Provides Needed Energy Transportation**

11. On March 31, 1953, this Commission granted approval “to construct, operate and maintain [Line 5] as a common carrier” within Michigan. (March 31, 1953, Opinion and Order, D-3903-53.1, at page 9.) In a related case, *Lakehead Pipe Line Co v Dehn*, 340 Mich 25, 37; 64 NW2d 903 (1954), the Michigan Supreme Court held that construction and operation of Line 5 was “for a public use benefiting the people of the State of Michigan.”

12. In 1953, Line 5 was built and became operational. It is a 645-mile interstate pipeline that originates in Superior, Wisconsin, and terminates near Sarnia, Ontario, Canada. Line 5 traverses Michigan’s Upper and Lower Peninsulas. It is a 30-inch diameter pipeline, except for the Dual Pipelines crossing the Straits, which as described above are comprised of dual, 20-inch diameter pipelines located within the Straits.

13. Enbridge’s Line 5 has an annual average capacity of 540,000 barrels per day (“bpd”). This Project will not impact its annual average capacity.

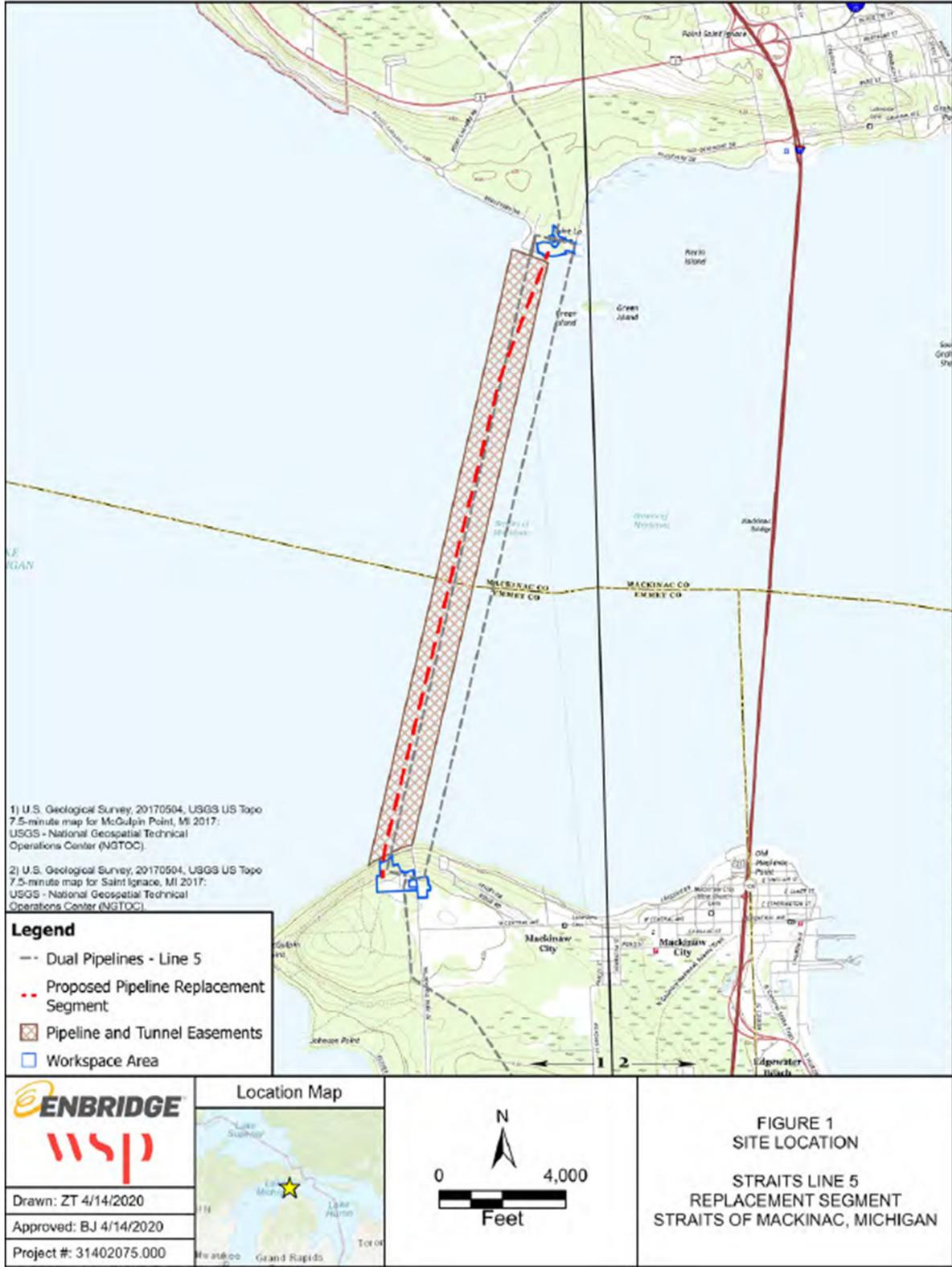
14. Line 5 transports light crude oil, light synthetic crude oil, light sweet crude oil, and natural gas liquids (“NGLs”) volumes. (Line 5 is not used to deliver heavy crude oil and, pursuant to the terms of the September 3, 2015 Agreement between Enbridge and Michigan, Line 5 is not to be used to transport heavy crude oil.) Specifically, Line 5 delivers NGLs to a facility at Rapid River in Michigan. At the Rapid River facility, much of the NGLs deliveries are converted to propane which is then distributed to heat homes and power industry in the Upper

Peninsula. The non-propane NGLs component is then re-injected back into Line 5 and delivered to a Sarnia, Ontario facility for further processing. In the Lower Peninsula, Line 5 accepts Michigan light crude oil production at Lewiston, where Line 5 interconnects with another pipeline system. Line 5 also delivers crude to the Marysville Crude Terminal that connects with a third-party pipeline, that then transports crude from the Marysville Crude Terminal to refineries in Detroit and Toledo. These refineries produce petroleum products, including gasoline and aviation fuels used by consumers in Michigan and surrounding regions. Line 5 light crude is also delivered to the Sarnia area, including local Sarnia refineries. A portion of the volume is delivered to Enbridge's Sarnia terminal, where the crude is injected into pipelines that deliver to refineries in New York and elsewhere. Line 5 also delivers NGLs to a facility in Sarnia, where it is converted to propane for both local consumption and to be imported back to Michigan to meet Michigan's needs.

#### **IV. CITY, VILLAGE, OR TOWNSHIP AFFECTED**

15. Pursuant to the requirement in Rule 447(2)(b), the municipalities affected by the Project are Wawatam Township in Emmet County and Moran Township in Mackinac County. Line 5 is already located and operating in these townships. The location of the Project is shown in Figure No. 1: Enbridge's existing Dual Pipelines across the Straits are shown as the grey dash lines; the Mackinac Bridge is the red line on the right; the limits of disturbance are shown in blue along the north and south side; and the easement for the tunnel in which the replacement pipe segment, indicated as the red dash line, will be located is shown by the red hash mark.

**Figure No. 1: Project Location**



**V.**  
**NATURE OF UTILITY SERVICE TO BE FURNISHED**

16. Pursuant to the requirement in Rule 447(2)(c), the nature of the service furnished by Line 5 will remain unchanged.

**VI.**  
**DESCRIPTION OF THE PROJECT**

17. Pursuant to the requirement in Rule 447(2)(e), Enbridge states that the Project involves the replacement of the Dual Pipelines with an approximate four-mile, single, 30-inch diameter pipe segment to be located within a concrete-lined tunnel. The replacement pipe segment will be located and placed into service, within the tunnel, below the lakebed of the Straits. The tunnel in which the replacement pipe segment will be located will extend from the south side of the Straits as near as practical to Enbridge's Mackinaw Station, in Wawatam Township, Emmet County, crossing beneath the lakebed of the Straits to the north side as near as practical to Enbridge's North Straits facility in Moran Township, Mackinac County. The replacement pipe segment located within the tunnel will be tied into the existing Line 5 pipeline at or near Enbridge's two existing facilities.

18. The tunnel will be constructed in accordance with the Tunnel Agreement, which is Exhibit A-5. (The tunnel will also be constructed in accordance with the environmental permits to be obtained from the United States Army Corps of Engineers ("USACE") and the Michigan Department of Environment, Great Lakes and Energy ("EGLE"). Exhibit A-11 is the Joint Permit Application filed with the USACE and EGLE.) The description of the tunnel, in which the replacement pipe segment will be located, is set forth in the Tunnel Agreement, which states at ¶6.1:

Project Description – The Tunnel, subject to the design and engineering work including the Geotechnical Investigations required under this Agreement, is to: (i) be approximately four (4) miles in length, extending from an opening point as near as

practical to Enbridge's existing station located on the north shoreline of the Straits to an opening point as near as practical to Enbridge's existing Mackinaw station located on the south shoreline of the Straits; (ii) except for the opening points on either side of the Straits, be constructed entirely underground, below the lakebed of the Straits; (iii) be approximately ten (10) feet in finished diameter or other diameter that is deemed by Enbridge to not be greater than that necessary to efficiently construct the Tunnel and to construct, operate and maintain a 30-inch Line 5 Replacement Segment, in which Third-Party Utilities, including but not limited to electric and broadband cables, may also be housed, provided that: (a) such Third-Party Utilities do not increase the diameter of the Tunnel beyond that necessary to construct, operate, maintain and use a 30-inch Straits Line 5 Replacement Segment; and (b) the presence of such Third Party Utilities is not incompatible with the operation, maintenance or use of the Line 5 Replacement Segment; (iv) be designed and constructed in accordance with prevailing, state of the practice tunnel standards and specifications for a design life of no less than ninety-nine (99) years; and (v) be constructed of a suitable structural lining, providing secondary containment to prevent any leakage of liquids from the Line 5 Replacement Segment into the lakebed or Straits.

19. The workspace on the north side will consist of approximately 16 acres and will be wholly contained within the area to be disturbed by construction of the tunnel. The area around the workspace is relatively undeveloped land. The workspace on the south side will consist of approximately 25 acres and will also be wholly contained within the area to be disturbed by construction of the tunnel. The workspaces will be used for pipe-spool fabrication, pipe installation, material-storage staging, preparation for hydrostatic testing of the pipeline, and other pipeline construction activities. The workspaces will be located on Enbridge owned property or property in which Enbridge has acquired the right to access for this Project.

20. The replacement pipe segment will be designed, installed, operated, and maintained in accord with federal pipeline safety regulations, specifically the Pipeline and Hazardous Materials Safety Administration ("PHMSA") pipeline safety regulations Parts 194

and 195 (49 Code of Federal Regulations “CFR” Parts 194 and 195). The pipe specifications for the replacement pipe segment will meet the requirements imposed by PHMSA.

21. The replacement pipe segment is proposed to be installed by welding the pipe joints at the south side near the existing Mackinaw Station and incrementally placed into the tunnel by a combination of pushing and pulling methods, with the equipment and personnel primarily located outside the tunnel. Means of restraining the pipe from uncontrolled advance into the tunnel will be incorporated in the pipe installation equipment. The pipe will be supported on pipe supports in a manner that preserves the integrity of the pipeline coating and that maintains access for future maintenance. The pipeline will be anchored at approximately the mid-point of the tunnel to allow for thermal expansion to be directed to each end of the tunnel where above ground expansion loops will accommodate pipeline movement. The pipeline between the expansion loops and the tie-in locations will be buried and conventionally installed.

22. The tie-ins will consist of 0.4 to 0.8 miles of pipe to connect the replacement pipe segment to Enbridge’s Line 5 on both sides of the Straits.

**A. The State of Michigan Has Already Recognized the Need for a Tunnel and a Replacement Pipe Segment to be Located Within the Tunnel**

23. An overview of the agreements between the State of Michigan and Enbridge which required Enbridge to develop the Project are set forth in the paragraphs below.

24. In November 2017, Enbridge entered into what is referred to as the “First Agreement” with the State of Michigan, which is Exhibit A-8. The First Agreement recognized that “the continued operation of Line 5 through the State of Michigan serves important public needs by providing substantial volumes of propane to meet the needs of Michigan citizens, supporting businesses in Michigan, and transporting essential products, including Michigan-produced oil to refineries and manufacturers.” (*Id.* at page 1.) The First Agreement was

entered into with the understanding that “the State and Enbridge desire[d] to establish additional measures and undertake further studies with respect to certain matters related to Enbridge’s stewardship of Line 5 within Michigan.” (*Id.* at page 2.)

25. As one measure to “further protect ecological and natural resources held in public trust by the State of Michigan,” Enbridge agreed at Stipulation I.F of the First Agreement to conduct an evaluation of alternatives to replace the Dual Pipelines. (*Id.* at pages 2 and 5.) Enbridge and the State of Michigan also agreed (at Stipulation I.H) to initiate discussions following the completion of Enbridge’s alternatives evaluation to enter into a further agreement concerning the operation of the Dual Pipelines. (*Id.*)

26. Enbridge submitted the completed alternatives analysis to the State of Michigan on June 15, 2018, which is Exhibit A-9. Enbridge’s alternatives analysis concluded that construction of a tunnel beneath the lakebed of the Straits connecting the Upper and Lower Peninsulas of Michigan, and the installation of a replacement pipe segment within the tunnel, was a feasible alternative to the Dual Pipelines, and that this alternative would essentially eliminate the risk of a potential release in the Straits.

27. On October 4, 2018, Enbridge entered into what is referred to as the “Second Agreement” with the State of Michigan, MDNR, and the Michigan Department of Environmental Quality (now known as “EGLE”), which is Exhibit A-10. The Second Agreement recognizes that “the evaluations carried out pursuant to the First Agreement have identified near-term measures to enhance the safety of Line 5, and a longer-term measure – the replacement of the Dual Pipelines – that can essentially eliminate the risk of adverse impacts that may result from a potential release from Line 5 at the Straits.” (*Id.* at page 3.) Under Stipulation I.F of the Second Agreement, Enbridge and the State of Michigan agreed to “promptly pursue further agreements” concerning the construction and operation of a tunnel to replace the Dual Pipelines. (*Id.* at pages 5 – 6.) The Second Agreement recognized that

the tunnel “is a feasible alternative for replacing the Dual Pipelines, and that alternative would essentially eliminate the risk of adverse impacts that may result from a potential oil spill in the Straits.” (*Id.*)

28. The Michigan Legislature, on December 12, 2018, enacted Act 359, which established the MSCA and provided it with authority to enter into the Tunnel Agreement and various tunnel-related agreements with Enbridge.

29. In accord with Act 359 and the commitments made in the Second Agreement, in December 2018, Enbridge and the MSCA entered into the Tunnel Agreement (Exhibit A-5) which concerns the construction of an underground tunnel and replacement of the Dual Pipelines with a Line 5 replacement pipe segment to be located within that tunnel. At the same time, Enbridge also entered into the Third Agreement (Exhibit A-1) with the State of Michigan, MDNR, and EGLE. The Third Agreement, at Paragraph 4.2(c), recognizes that the replacement of the Dual Pipelines with the Straits Line 5 Replacement Segment in the Tunnel is expected to eliminate the risk of a potential release from Line 5 into the Straits. (*Id.* at page 4.)

**B. Relocating the Pipe in the Tunnel Protects the Aquatic Environment**

30. While Line 5 has operated safely at the Straits for over 65 years, Enbridge is investing in Michigan with this major infrastructure project. As recognized by the Agreements above, locating the pipeline in the tunnel virtually eliminates the already very small risk of a release from Line 5 impacting the Straits. The possibility of an anchor strike causing a release will be entirely eliminated, and there will be multiple layers of protection, including the pipeline, the tunnel—including its concrete liner—and approximately 60 feet to 250 feet of earth between the tunnel and the lakebed of the Straits. These layers protect the Straits against the remote possibility of a release caused by another event.

**C. The Tunnel and Project Creates Economic Benefits**

31. Nearly two million labor staff-hours will be required to complete the tunnel and the Project. The average construction workforce will consist of approximately 200 workers including construction and inspection personnel. In addition, the construction contractor has committed to utilizing Indigenous Peoples for at least 10 percent of the total operating engineering and labor staff-hours worked. Constructing the tunnel and the Project could have a positive effect on the local economy through subcontracting opportunities and the expenditure of worker payroll for housing, food, fuel and other items.

**D. Continue to Serve the Petroleum and NGLs Needs of Michigan and the Surrounding Region**

32. After completion of the Project, Line 5 will continue to transport light crude oil, light synthetic crude oil, light sweet crude oil, and NGLs in the same volumes now transported by the Dual Pipelines, meeting the same needs that Line 5 currently serves. These products will continue to be converted into refined petroleum products, such as gasoline and aviation fuels, as well as propane, to meet the needs of Michigan and the surrounding region. (The use of Line 5 is discussed in more detail in the supporting testimony of Mr. Marlon Samuel.) The only change will be to move Line 5 from the lakebed of the Straits into the tunnel located at a depth of approximately 60 feet to 250 feet beneath the lakebed.

**E. Right of Way Requirements**

33. Enbridge has acquired the necessary property rights to use lands on the north and south sides of the Straits necessary for the installation, operation, and maintenance of the replacement pipe segment within the tunnel. Enbridge has been assigned by the MSCA the MDNR-granted easement in which the tunnel will be located across the Straits. (The Tunnel Easement and the Easement Assignment is Exhibit A-6.) Upon completion of construction, as per the Tunnel Agreement the title to the tunnel will be transferred from Enbridge to the MSCA.

In accord with the Tunnel Agreement, Enbridge and the MSCA will enter into a 99-year lease, which will authorize Enbridge to use the tunnel to operate and maintain the replacement pipe. Title to the replacement pipe segment will at all times remain with Enbridge.

**F. Executive Summary of Environmental Impact Report (“EIR”)**

34. Enbridge has evaluated the potential additional impacts of the Project on the geology, soils, land use, vegetation, terrestrial resources, protected species, cultural resources, groundwater resources, surface water resources, air quality, noise, and visual resources and aesthetics. Enbridge’s analysis of these issues is discussed in more detail in the EIR for the Project, which is Exhibit A-12 and discussed in the supporting testimony of Mr. Paul Turner. As explained in the EIR, the work to locate the replacement pipe segment within the tunnel will occur within areas that are to be disturbed by the construction of the tunnel. There will be negligible temporary, and no permanent environmental impacts associated with the Project. The relocation of the pipeline within the tunnel will not disturb the lakebed.

35. This Project will deliver long-term environmental benefits and protection for the Straits by replacing the Dual Pipelines with the replacement pipe segment located within a tunnel located at a depth of approximately 60 feet to 250 feet beneath the lakebed of the Straits.

**VII.  
UTILITIES RENDERING SAME TYPE OF SERVICE**

36. Pursuant to the requirement in Rule 447(2)(f), Enbridge states that there are no utilities rendering the same type of service with which the Project is likely to compete.

**VIII.  
OTHER REQUIREMENTS**

37. Pursuant to MCL 483.6, Enbridge renews and makes an explicit authorized acceptance of 1929 PA 16, as amended.

**IX.**  
**REQUEST FOR DECLARATORY RELIEF**

38. As an alternative to approving the Project, the Commission should determine that approval is not necessary because the Commission's 1953 approval of the construction, operation, and maintenance of Line 5 between the Wisconsin and Canadian borders embraces approval of the replacement of one approximate four-mile segment of Line 5. Enbridge accordingly requests a declaratory ruling pursuant to Section 63 of the Administrative Procedures Act of 1969, MCL 24.263, and Rule 448, being R 792.10448 or other finding, that Enbridge already has the requisite authority needed from the Commission for the Project based on the Commission's grant of authority for Line 5 in its 1953 Order. See also Michigan Supreme Court decision in *Lakehead Pipe Line Co v Dehn*, 340 Mich 25; 64 NW2d 903 (1954) (recognizing that Enbridge's predecessor had "sought and obtained the approval of the commission for its proposed pipe line across the State.")

39. Specifically, the Commission previously approved the construction, maintenance and operation of Line 5. (March 31, 1953, Opinion and Order, D-3903-53.1, at page 9.) In that decision, which included a concurring opinion by Commissioner Veale, the Commission found that the construction, operation and maintenance of Line 5 was in the public interest. The Commission found that Line 5, including the segment under the Straits, was fit for the purpose of common carriage of crude oil and petroleum products in interstate and foreign commerce and would serve the public interest, including in times of national emergency. According to the Concurring Opinion, the Line would also facilitate trade and relations with Canada. The Michigan Supreme Court in *Lakehead Pipe Line Co v Dehn*, 340 Mich 25, 37; 64 NW2d 903 (1954), also found that Line 5 is in the public interest and that its construction and operation is "for a public use benefiting the people of the State of Michigan."

40. Given that the Project involves no more than maintaining and continuing to operate Line 5 by replacing and relocating one approximate four-mile segment of the over 600-mile Line to enhance safety and reduce environmental risk at that one segment, the Project falls squarely within the scope of the Commission's prior approval to maintain and operate Line 5. The nature of the service and products transported, the operational capacity, and the geographic territory served all remain unchanged by the Project, underscoring that the Project falls within the scope of the Commission's prior approval to maintain and operate Line 5.

41. Fundamentally, the replacement of the approximate four-mile segment is no different than the replacement of small portions of facilities owned by electric and gas utilities subject to Rule 447, and the Commission has never taken the position that such maintenance-based replacements require Commission approval and should not do so now. For example, when an electric or gas utility relocates existing facilities from a public right-of-way at the request or requirement of a governmental unit, these utilities do not first file with the Commission a Rule 447 application seeking approval to construct its replacement facilities at another location. Likewise, when these utilities replace, maintain, or upgrade existing facilities, they do not first file an application with the Commission seeking approval for the construction related activities for these types of maintenance-based replacement projects. The activity contemplated by Enbridge in this Application has never been considered "proposed new construction or extension" of facilities under Rule 447 requiring an application; and the Commission creates a cumbersome process - - not only for Enbridge - - but for other utilities if Rule 447 is applied to the Project.

42. Further, although Act 16 regulates transportation by pipeline, that statute imposes no requirement that an application be filed with the Commission in these circumstances.

43. While Rule 447 requires persons or entities conducting oil pipeline operations to file applications specifically for “proposed new construction or extension” of facilities, the Project does not involve a proposed new construction of a pipeline or extension of a pipeline that has not already been authorized by the 1953 Order. Rule 447(2)(e). The Project modestly relocates approximately four miles of a 645-mile (previously approved and fully operational) pipeline so that Line 5 may be maintained at a location pursuant to agreements entered with the State of Michigan. Nowhere does Rule 447 require applications to be filed for segment-replacement projects that maintain and allow for the continued safe operation of a long-approved and existing facility.

44. Rule 447’s plain language does not require petroleum pipeline operators to file applications for replacement projects that maintain or allow safer operation of their existing utility facilities. That result makes sense; requiring an application can needlessly delay implementation of beneficial maintenance and improvement projects.

45. While the replacement pipe segment will not be placed within the precise easement that existed in 1953, it will be tied to the existing and previously approved Line 5 at both sides of the Straits and located in an easement issued by the State of Michigan in very close geographic proximity to the existing location of the Dual Pipelines. This relocation is the direct result of agreements with the State of Michigan to locate the replacement pipe segment in the tunnel so that Line 5 will continue to be operated in the same manner in which it is operated today but with enhanced environmental safety.

## **X. REQUEST FOR A PROMPT DECISION**

46. A prompt decision on Enbridge’s Application is important so that the replacement pipe segment may be put into operation as soon as the tunnel is completed. A timely resolution of this Application is also important to address the expressed concerns of

the State of Michigan, as well as the public's concerns, regarding the continued operation of the Dual Pipelines.

**XI.  
RELIEF REQUESTED**

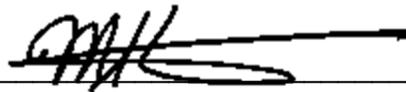
WHEREFORE, Enbridge respectfully requests that this Honorable Commission, acting under its authority pursuant to 1929 PA 16, as amended, and Rule 447 grant the following relief:

- A. Approve and grant Enbridge's Application for the Project;
- B. Find that the Project is just, reasonable and in the public interest;
- C. Issue an Order granting the replacement of the Line 5 Dual Pipelines crossing the Straits with the replacement pipe segment to be located within the tunnel;
- D. Issue an Order granting Enbridge the authority to replace, design, construct, install, tie-in, test, operate, maintain, repair and own the replacement pipe segment including all associated fixtures, structures, systems, coating, cathodic protection and other protective measures, equipment and appurtenances;
- E. Find that the location of the replacement pipe segment within the tunnel below the lakebed of the Straits reduces and minimizes potential adverse environmental impacts compared to the existing location of the Dual Pipelines, and therefore is consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, or destruction; and
- F. Grant such further relief as the Commission deems necessary and appropriate; or, in the alternative

G. Issue a declaratory ruling pursuant to Section 63 of the Administrative Procedures act of 1969 (being MCL 24.263), and Rule 448, (being R 792.10448) or other finding, that Enbridge already has obtained the authority it needs from the Commission for the Project for the reasons set forth in this Application.

Respectfully submitted,

Dated: April 17, 2020



---

Michael S. Ashton (P40474)  
Shaina R. Reed (P74740)  
Fraser Trebilcock Davis & Dunlap, P.C.  
124 West Allegan, Suite 1000  
Lansing, Michigan 48933  
517-482-5800  
[mashton@fraserlawfirm.com](mailto:mashton@fraserlawfirm.com)  
[sreed@fraserlawfirm.com](mailto:sreed@fraserlawfirm.com)