



Michigan Resource Stewards

Resource Professionals Continuing a Tradition of Service

Arminda Koch, President James Maturen, Vice President Gregory Eagle, Secretary Jim DeClerk, Treasurer

May 12, 2020

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

Emailed To: mpscdockets@michigan.gov

RE: Case Number U-20763 (Enbridge Energy Straits of Mackinac pipeline project application)

Executive Secretary,

The Michigan Resource Stewards (Stewards), a Michigan non-profit organization whose mission is to advocate for sound science in public policy related to the management of Michigan natural resources and environment, submits comments to the Michigan Public Service Commission (hereafter MPSC and Commission) regarding case number U-20763. The MPSC has requested that initial comments be confined to the request from applicant, Enbridge Energy (Enbridge), to consider the straits pipeline replacement project as already approved by the Commission's 1953 authorization. This Stewards' response is intended to comply with that focus request from the MPSC, but the Stewards intend to comment on the merits of the Enbridge application itself when the time comes and wishes to be notified of the opportunity when that arises.

The Stewards consider it ludicrous and a self-serving act, not in the public interest, for the applicant to ask for a declaratory ruling that would override the MPSC's statutory authority under Act 16 to review and make a decision on public need, pipeline routing, and safety; especially in such a controversial and complex project of such widespread Michigan citizen concern. For Enbridge to assert that a 1953 Commission decision gives the company the authority to proceed with the construction and placement of a newly constructed pipeline under the straits of one of the largest bodies of fresh water in the world is preposterous and we seek to support our position and ask for your complete consideration.

Prior MPSC Relevant Action - Enbridge Line 6B MPSC Contested Case Hearing U-17020

Our review of a portion of the record in the case of the review and hearings related to the Enbridge 4/16/2012 application to replace and relocate portions of the deteriorating and failed Line 6B pipeline in southern Michigan clearly shows that the Commission determined the Line 6B project to be subject to approval by the MPSC despite as having been the subject of an older authorization. This Line 6B was controversial and a strong matter of public concern especially after the 2010 largest inland spill of petroleum in the United States. Yet, the complexity of the Line 6B replacement of the old pipeline segments pales in comparison to the replacement anticipated in this Straits of Mackinac proposed project. We refer to the attached excerpts of those proceedings to illustrate our findings in the review of the record in application U-17020. Though the MPSC eventually ordered the Line 6B project to proceed, some changes in the implementation of the project were made as a result of public comment and the process interjected a needed and important sense of transparency and public influence. Further, the process resulted in articulation of the reason for approval and forced all participating parties to clearly state their positions and concerns. This previous record does not reflect any proposal or position from Enbridge to subvert the application review process by framing the Line 6B project as just a component of regular maintenance.

New Section of Line 5 Below Straits of Mackinac Is Not Maintenance

Stewards assert that the construction of a new pipeline to replace an old, deteriorating Line 5 pipeline under the Straits is not maintenance, but a completely new pipeline section of completely different construction methods and design. Even if the proposal was to just lay a replacement Line 5 pipeline segment adjacent to the current Line 5 on the bottom of the lake bed, that pipeline would be far different in construction and materials from the pipeline laid decades earlier. The old pipeline has a wrapped steel pipe construction that is now known to be prone to water incursion and has been shown to fail as evidenced by the reason for failure in 2010 of the company's Line 6B pipeline. It is unlikely that Enbridge's required pipeline maintenance plan (49 CFR Part 194 and 195; and Pipeline & Hazardous Materials Safety Administration regulations) contains plans to completely replace Line 5 in the manner now proposed by Enbridge. And, even if there now exists a maintenance plan to complete the relocation and replacement as described in the application (Stewards have not had access to the Enbridge pipeline maintenance and safety plan), such plan has only been recently prepared and has not been the subject of public nor MPSC review. For the Commission to allow this relocation project to proceed as if the company were just repairing a bottom support or mending a pipe wrapping defect places oversight of the work under the jurisdiction of the company itself, e.g. the fox watching the chickens.

The Proposed Replacement Pipeline Section Is Completely Different Than Old Pipeline

Enbridge intends to relocate Line 5 into an underground tunnel rather than on the bottom of the lake bed. In its application, Enbridge states, "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." The Stewards contend that the tunnel is in fact a part of the pipeline project and serving as a "double-wall" component of the re-engineered pipeline. In its own words, Enbridge categorizes the tunnel as a secondary containment structure, specifically in the application describes, "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." In a sense, and perhaps technically and legally, the tunnel is in fact a pipeline itself. Differently from a vehicular tunnel, whose purpose is to keep water out for safe and efficient movement of traffic under a water barrier; the Straits pipeline tunnel will not only be designed to keep water out but also to keep spilled oil contained and away from public waters. Thus the tunnel should itself be considered an integral component of the pipeline and co-regulated by the Commission and the Mackinac Straits Corridor Authority since the Authority may lack sufficient authority, expertise and responsibility to properly regulate and oversee construction and operation of the tunneled pipeline. Is not the tunnel akin to the current, although outdated, wrap of Line 5 and its cathodic corrosion protection program? The tunneled pipeline is not a mere relocation under the normal practice of maintenance, but rather, a new project subject to full review of the associated application. Questions and concerns remain on the details of the tunneled pipeline including such questions related to: tunnel sufficient sizing to support spill response activities/equipment or are containment systems sufficient to keep a tunnel overflow from reaching public waters. A full Act 16 application review process will insure that the tunneled pipeline project will be reviewed as a whole oil and gas transportation system.

Conclusion

In conclusion, Michigan Resource Stewards respectfully requests the Michigan Public Service Commission to deny Enbridge's request to categorize the 1953 Commission approval as authorization to proceed with the new pipeline in a Straits tunnel. This tunneled pipeline will be in place for at least 99 years and the Commission and the public must have extensive and exhaustive input into its need, routing, safety, design, construction and operation. By agreement, the taxpayers of Michigan will eventually own the tunnel portion of the pipeline and its design and construction as a pipeline component is essential to safety and minimizing public liability. The authorizations of

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1953 could not anticipate the technological changes and challenges that would develop over the decades and, we are sure, the 1953 staff did their best to see that the pipeline was engineered to the best available standards and techniques of the time. We suspect the earlier Commission staff would not have anticipated the current Line 5 would still be in operation in 2020. In its application, Enbridge references the earlier authorization and a supposedly relevant court decision that, 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.'" The review and decisions of 1953 could not and cannot not reflect the current condition and environment of today concerning natural resource sensitivity, court case law, routing, public need, and, especially, safety. We point out that environmental regulation and sensitivity began to evolve with Earth Day in 1970, years after the 1953 decisions, and numerous regulations (including the Michigan Environmental Protection Act), and a new Michigan Constitution in 1963, have since been legislated to conserve and protect the environmental and natural resources. The matter of safety and beneficial public use is a matter and decision of today rather than of a decision sixty seven years ago. The current Commission and its staff must have the same opportunity for this new project. To allow circumventing of the process avoids proper Act 16 assessment of public need, reasonable routing, and safety. Further, the public oversight and influence will be diminished if the decision is otherwise and the Michigan Constitution of 1963 provisions (Sections 51 and 52 of Article IV) making protection of the environment and public health of primary, paramount concerns will be breached.

Respectfully,

Arminda Koch
President
Michigan Resource Stewards
Reply to
Stewards Secretary
1025 East Price Road
Midland, MI 48642

Cc: Michigan Governor Whitmer
Michigan Attorney General Nessel

EXCERPTS OF MICHIGAN PUBLIC SERVICE COMMISSION ORDER #U-17020
Summary Prepared by Gregory C. Eagle
Michigan Resource Stewards
May 5, 2020

In the matter of the application of)
ENBRIDGE ENERGY, LIMITED PARTNERSHIP)
pursuant to 1929 PA 16; MCL 483.1 *et seq.* and) Case No. U-17020
Rule 601 of the Michigan Public Service)
Commission's Rules of Practice and Procedure,)
R 460.17601, to replace, construct, and operate certain)
segments of pipeline for the transportation of crude oil)
and petroleum in Berrien, Cass, St. Joseph,)
Kalamazoo, Calhoun, Jackson, Ingham, Oakland,)
Macomb, and St. Clair counties.

At the **January 31, 2013** meeting of the Michigan Public Service Commission in Lansing,
Michigan.

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"At the conclusion of oral arguments on the motions, the **ALJ granted additional time** for the parties to review the NTSB report,
thereby extending the schedule of the case by several months."

Stewards Comment: The 2013 decision, and the events leading up to that decision, involved a history of review of the Enbridge Act 16 application and even considered the granting of additional time to complete the review.

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"Statutory Provisions

Pursuant to Act 16, the Commission is granted the authority to control and regulate oil and petroleum pipelines. Act 16 provides the Commission with broad jurisdiction to approve the construction, maintenance, operation, and routing of pipelines delivering liquid petroleum products for public use. Generally, the Commission will grant an application pursuant to Act 16 when it finds that (1) the applicant has demonstrated a public need for the proposed pipeline, (2) the proposed pipeline is designed and routed in a reasonable manner, and (3) the construction of the pipeline will meet or exceed current safety and engineering standards. See, the July 23, 2002 order in Case No. U-13225."

Stewards Comment: The MPSC is granted the authority and control of petroleum pipelines pursuant to Act 16 requiring findings based upon public need, reasonable routing, and safety. This historical case of an almost identical parallel partial replacement of an existing pipeline resulted in the MPSC decision to review a submitted application and eventually a contested case hearing to contemplate and make a decision on the statutory obligated findings.

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"According to him, the applicable governing federal pipeline safety regulations are contained in 49 Code of Federal Regulations Part 194 and 195 (49 CFR Parts 194 and 195). He also acknowledged that Enbridge would be governed by applicable national technical standards."

Stewards Comment: Technical standards require a maintenance plan and the decision to replace portions of a pipeline must be the subject of the said plan and, if the plan (which has not yet been the subject of review by this concerned party) does prescribe

the use of a tunnel addition to the pipeline product transport mechanism, it would have been included in the plan only recently and should be a subject of MPSC review as part of the application consideration.

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“On the issue of the reasonableness of the proposed pipeline route, Enbridge contends that the route is reasonable because it follows the path of the existing Line 6B pipeline. Also, it is unrefuted that Line 6B is the only pipeline...”

Stewards Comment: The Line 6B pipeline replacement is not dissimilar to the current plans to construct a replacement Line 5 with Line 6B generally constructed within 25' of a degraded pipeline owned by the same company. This Line 6B non-complex, circa 2013 project was subject to application review and a contested hearing. And, it was not characterized as a maintenance relocation not subject to permitting nor was routine maintenance ever brought up in the review or contested case hearing to frame the pipeline relocation project as anything other than a matter subject to MPSC permitting.

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“The April 16, 2012 application filed by Enbridge Energy, Limited Partnership requesting approval to replace, construct, and operate a crude oil and petroleum pipeline running through Berrien, Cass, St. Joseph, Kalamazoo, Calhoun, Jackson, Ingham, Oakland, Macomb, and St. Clair Counties...”

Stewards Comment: The application review period and contested case process resulted in an eight month plus fifteen day time period (decision of 1/31/2013) to properly consider the Act 16 factual justification of a far less complicated resolution of a degraded and failed pipeline. Considerable public transparency and involvement is necessitated to insure that pipeline replacement is not subject to the mere decision of a private party to relocate a pipeline pursuant to its own maintenance decision and prescription, if one indeed exists.