

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

CASE NO. U - 20763

ENBRIDGE LINE 5 TUNNEL PIPELINE SEGMENT

COMMENTS OF THE STRAITS OF MACKINAC ALLIANCE

MAY 12, 2020

The Straits of Mackinac Alliance (Alliance or SMA) is a 501(c)3 entity and part of the Oil and Water Don't Mix (OWDM) coalition. SMA is a party in a contested case before Administrative Law Judge Pulter challenging 78 anchor screw permits for the Straits twin pipeline segments as approved by the Michigan Department of Natural Resources (now the Michigan Department of Environment, Great Lakes and Energy (EGLE) on March 22, 2018.

These Comments are in response to the Enbridge Application dated April 17, 2020 - specifically Enbridge's "request for a ruling confirming that it already has the requisite authority from the Commission to construct the replacement segment of Line 5..."

1. Background

The Alliance is composed of residents in the Straits of Mackinac area. Most are property owners living on either Lake Michigan or Lake Huron. Our mission is to maintain all that is "Pure Michigan" in our Great Lakes, its tributaries, shorelines, wetlands, and fisheries. We believe there is no such thing as an acceptable risk to the upper Great Lakes-- Michigan's greatest natural treasure. Many of our members have been involved in Line 5 issues even before the formation of the Michigan Pipeline Safety Advisory Board in the fall of 2015. Our members attended almost every meeting of that Board and submitted many position papers (We have the volunteer assistance of many retired experts in the law, engineering, and Great Lakes water management and we strive for accuracy). We have attended countless forums, town halls meetings, county board meetings, city meetings, township meetings - even Enbridge sponsored meetings across northern Michigan. We are here primarily because we live at ground zero for either an oil spill or a natural gas liquids deflagration or explosion.

2. A New Line 5 Segment is a Low Benefit, High-Risk Project

We will not repeat the readily available information on Line 5 operations, but we do want to emphasize the following: Only about 6% of the 23 million gallons of oil products going daily through the Straits in the twin pipelines of Line 5 stays in Michigan. The rest is delivered to Sarnia, Ontario for the Canadian market and for export - mostly overseas. Highly flammable explosive natural gas liquids (NGLs) from which propane is extracted, are shipped about 20% of the time in Line 5. The Rapid River location downloads about 2600 barrels of NGLs per day, and extracts about 1300 barrels of propane per day for use in the central UP, then re-injects the rest back into Line 5 for delivery to Sarnia. The amount extracted at Rapid River is roughly less than 2 % of the total NGL transported in Line 5. Obviously, the primary destination for Line 5 propane and other NGLs is Sarnia, and not the Upper Peninsula.

When Line 5 is pumping light crude, about 30,000 – 35,000 barrels are delivered to Detroit Marathon for refinement into gasoline. The capacity of the refinery is roughly 135,000 barrels per day. Based on public statements by Enbridge, the crude from Line 5 amounts to about 1.5% of Michigan's daily gasoline consumption.

You will note that the Application is devoid of any volume figures on Line 5 oil products delivered to Rapid River or Detroit Marathon. (see paragraphs 14 & 24 of Application for descriptions like “much”, “a portion of the volume”. and “a substantial volume”) We are confident of our figures. However, one would hope the MPSC can at least require Enbridge to publicly reveal this information. Enbridge's essential argument is that Line 5 supplies Michigan with much of its vital energy needs. The actual volumes being delivered to Rapid River and Detroit Marathon are thus clearly relevant. But it also includes the Sarnia, Ontario refinery complex as part of its “regional refinery” customers while never using the word “Sarnia” in that description. Forcing Enbridge to disclose hard numbers on its Michigan delivery volumes will make it difficult to continue its myth of Line 5 providing a vital public service to Michigan.

Michigan is but a high-risk shortcut for getting western Canadian oil products to Sarnia. Since 1968, there have been 33 leaks of over 1.1 million gallons of oil products in Michigan from Line 5. The April 2018 anchor drag in the Straits gouged both lines and occurred during a blizzard; preventing deployment of any boats for several days. The Michigan Tech Risk Study of 2018 found that a worst-case spill could be almost 2.5 million gallons of oil. U-M studies indicate that over 700 miles of shoreline and wetlands could be oiled. Enbridge now plans to run highly flammable NGLs in a new pipeline through an enclosed space with various electrical lines for 99 years without experiencing a leak and a violent deflagration or explosion. What could possibly go wrong? The devastation caused by an oil leak in the twin pipelines during the indefinite tunnel project construction, or a gas explosion in the tunnel's new pipeline would be beyond our comprehension. “Pure Michigan” as we know it, would die.

In contrast, the alleged Michigan benefits are almost negligible. This fact is further demonstrated by the findings in various studies showing that a Line 5 shutdown would mean a retail price increase of only 1-2 cents per gallon of gasoline, and about 5 cents per gallon for retail propane. (Dynamic Risk Alternative Study of 2018, London Economics International Study of 2018, and UP Energy Task Force Report of 2020). The market is an unbiased indicator of essential services. The fact that a Line 5 shutdown would have such a minor impact on retail gasoline and propane prices is the best indicator of its non-essential status.

3. 67-Year-Old findings of Public Benefit Do Not Apply

Enbridge argues that the 1953 findings of the MPSC should be applied to today's situation. At paragraph 38 of the Application, Enbridge argues that the 67-year-old approval “embraces” the new proposed segment. But Line 5 is different now. Its daily volume is far higher. It is currently pumping 23 million gallons per day (547,000 barrels) of mostly Canadian crude oil, or NGLs, daily through the Straits twin pipeline segment. In 1953, Line 5 was designed to handle 300,000 barrels or 12.6 million¹ gallons a day¹. Enbridge has nearly doubled the capacity since 1953.

¹ MPSC, March 31, 1953, D-3903-52.1, p. 6

The Straits segment was originally designed to have twin 20-inch pipelines, laying on the lakebed for support; and permitting movement with the current and thermal expansion. The proposal for the new segment is for a totally different new pipeline: a single 30-inch diameter line, over four miles long. It will presumably be seam-welded rather than butt-welded like the 1953 twin pipelines. It will be inside a tunnel, fastened to the tunnel itself, with a fixed thermal expansion joint at the center of the segment (Application, par. 21). As we continue to stress, NGL leaks in the present twin pipelines would rise to the surface and dissipate. By contrast, NGL leaks in a confined tunnel is a design disaster waiting to happen.

Michigan's need for oil products in 2020 is totally different than it was in 1953. Western Canadian oil is the highest priced oil in the world. Current demands for oil have dropped dramatically and industry projections for shale oil sources do not look promising. The shale oil producers may not be in business when the tunnel project is completed. Any projection of tunnel use beyond the next decade is highly speculative.

The current Covid-19 crisis has exposed the fragility of the Enbridge business model. Whether it is a pandemic, climate change, loss of business as fossil fuels are replaced, or some combination thereof; it will deal an economic blow to Line 5 – perhaps fatal – well before 99 years. Michigan does not need a tunnel to nowhere - assuming Enbridge decides to invest the funds necessary to build this project. Even if the project is completed, the prospect of Michigan becoming the owner of this “black elephant” needs to be considered an unnecessary liability. While Enbridge would own the pipeline during the proposed 99-year lease, the 2018 agreements provide no protection against bankruptcy, This presents a real prospect of Michigan owning a tunnel with a derelict pipeline relatively soon after the tunnel project is completed. Moreover, there are many other sources of oil products available for Michigan's foreseeable needs, that were not available in 1953. These alternatives need to be fully examined.

The projected costs for the project are already rising dramatically. The original extremely low-ball estimate of \$500 million touted² in the original plan for a ten-foot diameter tunnel has been blown away by the recent change doubling the tunnel diameter to 20-21 feet. This involves excavating at least four times the material originally planned from under the lakebed; and at a minimum, increases the costs four-fold. This investment looks less and less warranted as each day passes, given the probable diminished needs for the expensive western Canada oil shale product. Nothing in the various 2018 agreements between the State and Enbridge requires that the project must be built by Enbridge. The current legal war between Enbridge and the State was triggered by Enbridge's inability to provide a firm completion date within the foreseeable future.

We would also note that on August 17, 2017, Enbridge made written comments on the tunnel alternative proposed in the Dynamic Risk Draft Alternatives Report. Enbridge's technical report² response noted probable higher costs, significant permitting delays and construction activity disruptions for the Mackinaw City and St. Ignace communities during the tunnel construction (now estimated at 3 years). “Regarding Tunnel Design, there likely will be

² Enbridge Technical Report of August 17, 2017, p. 8.

impacts to the local community associated with blasting, hauling of waste rock away from the shafts, and equipment movement. In addition, significant permitting challenges and delays are likely.”

These legitimate disruption concerns raised by Enbridge assumed a 10-foot-diameter tunnel. Multiply the excavation concerns by a factor of 4, with the 20-21 foot diameter tunnel and the issues become far greater.

We further note that while the State Supreme Court, in *Lakehead Pipeline v Dehn*, 340 Mich 25 (1954) approved the MPSC finding of a public purpose, it also relied upon a number of factors which are no longer applicable today. The Court noted that the MPSC finding relied upon the assertion that Line 5 would supply several unidentified Michigan refineries, 340 Mich at 28. However, the Detroit Marathon refinery is the only Michigan refinery that is being supplied (partially) by Enbridge Line 5. The decision also notes a public purpose would be served by a Line 5 role in the intrastate transport of oil productions. Again, the facts show rather limited Michigan Kalkaska oil quantities are added to Line 5 at the Lewiston, Michigan pumping station. Clearly these 67-year-old MPSC and Supreme Court decisions relied on proposed benefits that did not occur.

It should thus be obvious that the facts and circumstances in place at the time of the 1953 MPSC approval are not the same 67 years later.

4. The Application Falsely Claims the New Tunnel Project is “Mere Maintenance”

As noted at the outset, the Straits Alliance has heard “mere maintenance” justification for Line 5 for several years. Our anchor screw support permit case challenged permits for 78 anchor screws which saddle and capture the twin pipelines, and then screw into the lakebed for about ten feet. The plan is to have in place some 128 sets of such screws (over 250 screws in total), covering most of the 4.5-mile segment of the twin pipelines in the Straits. The screw anchor supports currently hold the twin twenty- inch pipelines approximately 2-4 feet off the lakebed - perfect height for the flukes of the next accidental anchor drag. The screw anchor supports have never been studied by any state agency for their environmental impact on Line 5 operations. The Great Lake Submerged Lands Act (GLSLA) has never been applied to this new structure. The GLSLA applies to docks or a single piling to be placed in the Great Lakes; but so far, not these 256 anchor screw supports! Enbridge and the State Department of Environment, Great Lakes and Energy (EGLE) tells us the construction of this massive “underwater suspension bridge” is once again “mere maintenance”.

Understand that the original plan and design was to have the twin pipelines lay on the lakebed for support. This design accommodated currents and thermal expansion issues. However, the planners underestimated the bottom currents and the scouring impact on the lakebed. The 1953 Easement requires line support if any gaps of 75 feet or greater develop.

The ordinary meaning of maintenance is to preserve the status quo. The technical meaning of maintenance involves functional checks, repairing or replacing of necessary devices, equipment, and machinery. The new pipeline segment is in fact a new pipeline. It cannot be considered as maintenance of the existing twin pipeline section.

Yet, at Paragraph 41 of the Application, Enbridge claims the new pipeline is merely a “maintenance-based replacement” and not a “proposed new construction or extension”. This is not the only misuse of the maintenance ploy in the Application. The \$4 billion “major infrastructure project”, requiring 2 million man-hours of construction over three years (paragraphs 30- 31) starts out being applauded as a rather significant investment in Michigan.

Without skipping a beat, Enbridge then quickly moves to downplay this “major infrastructure” project: “The only change will be to move Line 5 from the lakebed of the Straits into the tunnel...” (Paragraph 32). At paragraph 40 we are told the project “involves no more than maintaining and continuing to operate Line 5 by replacing and relocating one approximate four-mile segment...” As noted above, paragraph 41 calls the project “a maintenance-based replacement” not to be confused with a “proposed new construction of a pipeline”. At paragraph 43 we are again told that “the project does not involve a proposed new construction of a pipeline...” but rather just “modestly relocates approximately four miles...”

Enbridge continuously moves from the project being a major infrastructure investment to a modest relocation, attempting to relabel the construction of a significantly different pipeline to a modest maintenance- based replacement. The facts do not support this contention.

The request for a declaratory ruling should therefore be denied.

Patty Peek
Chair, Strait of Mackinac Alliance