STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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.	Case No. U-20763 (e-file paperless)

_____/

THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S RESPONSE BRIEF IN OPPOSITION TO JOINT APPELLANTS' APPLICATIONS FOR LEAVE TO APPEAL THE ADMINISTRATIVE LAW JUDGE'S RULING ON MOTION *IN LIMINE* ON REMAND

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

Spencer A. Sattler (P70524)
Benjamin J. Holwerda (P82110)
Nicholas Q. Taylor (P81020)
Assistant Attorneys General
Public Service Division
7109 W Saginaw Hwy
Lansing, MI 48917
Telephone: (517) 241-6680

Dated: March 23, 2021

Table of Contents

I. Introduction

Pursuant to Rule 433(1) of the Rules of Practice and Procedure before the Michigan Public Service Commission ("MPSC" or the "Commission"), the Michigan Public Service Commission Staff ("Staff") files its Response in Opposition to the Michigan Environmental Council, Tip Of The Mitt Watershed Council, and the National Wildlife Federation's ("MEC") Application for Leave to Appeal Ruling on Motion *in Limine* on Remand, For the Love of Water's ("FLOW") Application for Leave to Appeal Ruling on Motion *in Limine* on Remand, the Bay Mills Indian Community, Grand Traverse Band of Ottawa and Chippewa Indians, Little Traverse Bay Band of Odawa Indians, and Nottawaseppi Huron Band of the Potawatomi's ("BMIC") Application for Leave to Appeal Ruling on Motion *in Limine* on Remand, and the Environmental Law & Policy Center and Michigan Climate Action Network's ("Climate Organizations" or "Climate Orgs") Application for Leave to Appeal Ruling on Motion *in Limine* on Remand (collectively referred hereinafter as "Joint Appellants.")[1]

Staff does not contest that the Joint Appellants have satisfied the requirements of Rule 433(2) and they may seek Commission review, however, Staff

[1] The Joint Appellants include the Michigan Environmental Council, Tip of the Mitt Watershed Council, and the National Wildlife Federation ("MEC"), For the Love of Water ("FLOW"), the Bay Mills Indian Community, Grand Traverse Band of Ottawa and Chippewa Indians, Little Traverse Bay Band of Odawa Indians, and Nottawaseppi Huron Band of the Potawatomi ("BMIC"), and the Environmental Law & Policy Center and Michigan Climate Action Network ("Climate Organizations" or "Climate Orgs").

respectfully requests that the Commission deny the Joint Applicants' requested relief and affirm in its entirety Administrative Law Judge Dennis Mack's ("ALJ") Ruling on the Motion *In Limine* on Remand ("Remand Ruling"). In addition, Staff adopts, incorporates, and restates the arguments it made in its response brief to the Joint Appellants' Applications for Leave to Appeal the ALJ's first Ruling on the Motion *In Limine* ("Initial Ruling") filed with the Commission on November 20, 2020 (dkt #447.) Staff believes the ALJ properly considered all material relevant to the Commission's review under MCL 483.1, *et seq* ("Act 16"), the Michigan Environmental Protection Act ("MEPA"), applicable administrative rules, and Commission and court precedent to reach his decision. Staff acknowledges the significant public interest generated by the proposed project; however, public interest alone cannot provide blanket authorization to expand the statutory scope of this proceeding or allow consideration of extraneous and irrelevant material.

II. Procedural History

On June 30, 2020, the Commission granted Enbridge Energy, Limited Partnership's ("Enbridge") request for a declaratory ruling but denied the requested relief. MPSC Case No. U-20763, 6/30/2020 Order. The Commission determined that Enbridge did not have the requisite authority to proceed with the proposed project without a hearing, because it "differs significantly" from what was originally approved in 1953. *Id.* at 58. The Commission recognized that not all proposed pipeline activity requires an Act 16 application, but "the two factors that commonly require a new application are construction activities that alter major attributes of a

pipeline, such as a change in diameter or relocation of a pipeline"—both of which the Commission concluded are involved to some degree in Enbridge's proposal. *Id.* at 66-67. The Commission left open the scope of issues to be considered in the contested case. *Id.* at 58.

On October 23, 2020, Judge Mack issued his Initial Ruling denying in part and granting in part Enbridge's Motion *in Limine*. The ALJ began by stating "[t]he Commission's ***statutory authority will control the determination*** of whether the issues raised in the Motion are proper for consideration in this case." Initial Ruling, p 4. (emphasis added.) With Act 16 as a guidepost, the ALJ ruled that Enbridge's Motion be "[d]enied as it pertains to the Utility Tunnel,"[2] "[g]ranted regarding the operational aspects, including the public need and safety, of the entirety of Line 5," and "[g]ranted as it pertains to the review of the project under MEPA does not entail the environmental effects of greenhouse gas emissions and climate change." *Id.* at 19-20.

Pursuant to Rule 421(1),[3] Judge Mack therefore determined as outside the scope of the hearing: (1) the public need for the entire Line 5 pipeline and the

---

[2] Staff and the Joint Appellants do not contest the inclusion of the utility tunnel in the scope of review and no party, including Enbridge, filed an application for leave to appeal the ALJ's Rulings. Therefore, Staff will not recite the ALJ's findings concerning the utility tunnel here.

[3] In response to the argument that consideration of the Motion is premature and more appropriate for a motion to compel or motion to strike hearing, Mich Admin Code R 792.10421(1)(a) and (1)(d) explicitly states: "(1) A prehearing conference may be held for any of the following purposes: (a) Identifying and simplifying the factual and legal issues to be resolved . . . . (c) Determining the scope of the hearing."

products it currently transports; (2) any broad environmental impacts, such as climate change or greenhouse gas emissions, related to ongoing Line 5 operations; (3) safety issues related to ongoing Line 5 operations (distinguished from safety issues related to the portion being replaced and routed within the tunnel); or (4) feasible and prudent alternatives (e.g. truck or rail transportation of the petroleum products) to ongoing Line 5 operations (distinguished from alternatives to the proposed tunnel project.) On November 6, 2020, the Joint Appellants filed applications for leave to appeal the Initial Ruling to the Commission.

On November 13, 2020, Governor Gretchen Whitmer and the Department of Natural Resources ("DNR") issued a Notice of Termination and Revocation ("Notice") to Enbridge revoking and terminating the 1953 Easement— the easement utilized by Enbridge to operate the existing dual pipelines in the Straits of Mackinac ("Straits")—"effective 180 days after the date of this Notice to provide notice to affected parties and to allow for an orderly transition to ensure Michigan's energy needs are met." Notice, p 20. The Notice also "requires Enbridge to cease operation of the Straits Pipelines 180 days after the date of this Notice [and to] permanently decommission the Straits Pipelines in accordance with applicable law and plans approved by the State of Michigan." *Id.* On that same day, the Attorney General ("AG"), on behalf of the State of Michigan, Governor Whitmer, and the DNR filed a complaint in the Ingham County Circuit Court seeking declaratory and injunctive relief to enforce the Notice against Enbridge. Complaint for Declaratory and Injunctive Relief, *Michigan v Enbridge Energy, LP*, No. 20-000646-CE (Ingham

County Cir Ct 11/23/2020). Enbridge subsequently removed the complaint to federal court and initiated a separate federal complaint to prevent the Governor and DNR from enforcing the Notice. Not. of Removal, *Michigan v Enbridge Energy, LP*, No. 1:20-cv-01142 (W D Mich, 11/24/2020); Complaint for Declaratory and Injunctive Relief, *Enbridge Energy, LP v Whitmer*, No. 1:20-cv-01141 (WD Mich, 11/24/2020). As of filing this brief, those cases remain pending.

On December 9, 2020, the Commission abstained from ruling on the merits of the appeals of the Initial Ruling and remanded the Motion back to the ALJ for reconsideration and rehearing given that the Notice ostensibly terminates the legal underpinning for the existing dual pipelines, i.e., the 1953 Easement, and that the appellants had not had a full opportunity to brief the implications, if any, the Notice has on this case. MPSC Case No. U-20763, 12/9/2020 Order, p 6. The Commission remarked that the Notice represents a "fundamental change that may significantly affect the arguments that the parties would have made in support of, and in opposition to, the motion." *Id.* at 5-6. The Commission also believed that the Initial Ruling, "along with the motion and responses to the motion, were premised on the continued existence of the 1953 Easement and the continued operation of the dual pipelines under that easement." *Id*. at 5.

On February 23, 2021, the ALJ issued his Remand Ruling denying in part and granting in part the Motion consistent with his opinion in the Initial Ruling. The ALJ concluded that because the Commission has already authorized the construction and operation of Line 5 in MPSC Case No. D-3903-53.1, 3/31/1953

Order ("1953 MPSC Order"),[4] "neither the filing of the Application at issue in this case, nor the State's Notice . . . allows for a reexamination of the public need for Line 5, or its operational and safety aspects, under Act 16." Remand Ruling, p 21. Further, the ALJ echoed his Initial Ruling by concluding that "[t]he issuance of the Notice does not expand the MEPA inquiry to include the environmental effects of the operation and safety of Line 5, or those arising from the production, refinement, and consumption of the oil transported on Line 5." *Id.*

The Joint Appellants timely filed their Applications for Leave to Appeal the ALJ's Remand Ruling on March 9, 2021. Staff does not contest that the Joint Appellants have satisfied Rule 433, but respectfully requests the Commission deny the requested relief and affirm the ALJ's Rulings in their entirety. Below, Staff responds in the following ways: (1) consideration of the public need for the pipeline is controlled by the Commission's Act 16 jurisdiction and the activity proposed in the application; (2) the 1953 MPSC Order establishes the public need for Line 5 and to revisit that determination in this case implicates the Administrative Procedures Act; and (3) the scope of MEPA is restricted to the conduct proposed in the application and authorized under Act 16.

---

[4] *In the matter of LakeHead Pipe Line Company, Inc, for approval of construction and operation of a common carrier oil pipe line*, MPSC Case No. D-3903-53.1, 3/31/1953 Order, see Attachment A.

III. Argument

A. Consideration of the public need for the pipeline is controlled by the Commission's Act 16 jurisdiction and the activity proposed in the application.

The Rulings draw an important line in the review of this Act 16 pipeline replacement and relocation project. Without reasonable and legally sound limitations, the Joint Appellants' anything-goes-approach would expand and weigh down the evidentiary record until it buckles. For example, proposed topics of consideration include BP restructuring its business model, oil and gas producers filing for bankruptcy, cancellation of tar sand projects, global climate change impacts related to the use of petroleum, electric vehicle industry growth, and the oil and gas policies of foreign countries. See, e.g. FLOW Initial Brief on Remand, pp 15-18 (dkt #545); Climate Orgs Br, p 8. The ALJ determined that in addition to several evidentiary considerations, the "scope of the case is necessarily dictated by two factors . . . the activity proposed in the application [and] the Commission's jurisdiction over that proposal under Act 16." Initial Ruling, p 14.

When analyzing the two scope factors articulated by the ALJ in this case, the Joint Appellants' arguments collapse. First, the activity proposed by the application is self-evident. A simple glance at the case heading details the activity proposed in the application: to "Replace and Relocate the Segment of Line 5 Crossing the Straits of Mackinac into a Tunnel Beneath the Straits of Mackinac." Indeed, the Commission described the application as one proposing the "replacement of the Dual Pipelines with a new, 30-inch-diamter, single pipeline to

be relocated within a new concrete-lined tunnel 60 to 250 feet beneath the lakebed of the Straits, and decommissioning of the Dual Pipelines." MPSC Case No. U-20763, 6/30/2020 Order, p 68. Second, the Commission's jurisdiction over the application's proposed activity, i.e., the standards of Act 16, is "well established"[5] and supported by case law. The Commission should therefore reject the invitation by the Joint Appellants to expand the scope of review under Act 16 and analyze anything other than what has been noticed in the application and properly incorporated by the Rulings.

1. The Commission's Act 16 standards are well established.

The first factor in determining the proper scope is the extent of the Commission's Act 16 jurisdiction. Initial Ruling, p 14. The Commission has historically considered three criteria in deciding whether to approve or deny an Act 16 application: whether (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. MPSC Case No., U-13225, 7/23/2002 Order, pp 4-5. In addition, the Commission considers whether (4) the project impairs the environment under MEPA and, if so, whether there are reasonable and prudent alternatives to the impairment. MCL 324.1701, *et seq.* Although Act 16 confers

[5] The ALJ characterized the criteria the Commission considers in an Act 16 application as "well established." Initial Ruling, p 15.

broad authority to the Commission over the pipeline project, the scope and breadth of the Commission's authority is restricted by legislative mandate. *Union Carbide Corp v Public Service Com'n*, 431 Mich 135 (1988) ("As a creature of the Legislature, the commission possesses only that authority bestowed upon it by statute.")

The key word contained in the Commission's Act 16 review is whether the applicant has demonstrated a public need for the proposed *pipeline*, that the proposed *pipeline* is designed and routed in a reasonable manner, that the construction of the *pipeline* will meet or exceed current safety and engineering standards, and that MEPA's requirements have been satisfied. The *pipeline* in question, and noticed by the application, is not the 645-mile stretch of Line 5 pipeline from Superior, Wisconsin to Sarnia, Ontario, but rather the 4-mile replacement pipeline segment of Line 5 that will be redesigned and relocated beneath the lakebed of the Straits and placed into a utility tunnel. MPSC Case No. U-20763, 6/30/2020 Order, p 67. Notably the latter two considerations about the design, route, and whether the pipeline meets or exceeds industry standards leaves no doubt what pipeline is in question.

The case that perhaps best illustrates the Commission's measured approach to Act 16 applications is *In re Wolverine*, MPSC Case No. U-13225, 7/23/2002 Order ("*Wolverine*"). In *Wolverine*, the pipeline company sought to construct, operate, and maintain a "12-inch pipeline system, approximately 26 miles in length, for the transportation of liquid petroleum products." *Id.* at 1. The proposed pipeline consisted of three segments, the first commencing near the company's existing 8-

inch pipeline. *Id.* The Commission conducted an extensive review of the safety and environmental risks associated with the proposed pipeline extension project, including how the 26-mile pipeline could impact local waterways and wells, nearby commercial and residential areas, and even how the pipeline might attract terrorist activity. *Id.* at 35. Although the Commission conducted an extensive evaluation of the proposed 26-mile pipeline, at no point did the Commission examine: (1) any portion of Wolverine's existing pipeline system not clearly related to the proposed extension; and (2) whether the pipeline could or should extend the operational life of the existing pipeline system. In this regard, the ALJ correctly concluded that "a fair reading of *Wolverine* is the Commission applied the Act 16 standards to the portion of the pipeline proposed to be replaced." Initial Ruling, p 15 n 8.

MEC counters that *Wolverine* is a prime example of how the Commission is focused on a pipeline "segment's impact on the system of which it is a part." MEC Br, 17. MEC discusses how the Commission considered testimony on the "larger system" including whether the existing pipeline provided sufficient capacity to the market. *Id.* at 16. However, MEC discounts the stated purpose of the replacement segment was to increase capacity. *Wolverine*, p 5. As the ALJ noted, the Commission in *Wolverine* therefore applied the Act 16 standards to the portion of the pipeline to be replaced in the context of whether it would satisfy the purpose proposed in the application. Initial Ruling, p 15 n 8. MEC would like the Commission to analyze the "***public need for the subject pipeline system*** when reviewing a request to replace segments of that pipeline" (MEC Br, p 16) (emphasis

added) and the "continued operation" of Line 5. These proposed considerations would certainly be a departure from *Wolverine* as the Commission performed no such comparable analysis to Wolverine's existing system.

Similarly, MEC's use of U-17020 to support an expansive Act 16 review misses the mark. In that case, Enbridge sought approval to construct an additional 110 miles of new 36-inch pipeline and 50 miles of new 30-inch pipeline to its existing Line 6b pipeline system. MPSC Case No. U-17020, 1/31/2013 Order, pp 1-2. Considering the sheer size of the request, the Commission nevertheless focused its attention on the "five separate, noncontiguous pipeline segments" proposed in the application. *Id.* at 2, n 2. MEC asserts "the Commission reviewed the public need for the entirety of Line 6B and the Lakehead system as a whole in determining the need for the replacement segments." MEC Br, p 18. Although the Commission reviewed Enbridge's testimony explaining the background of Line 6b and the Lakehead pipeline system, it did not revisit or reanalyze the public need for those existing systems. Rather, the Commission evaluated the public need for the pipeline segments as an important update to the existing pipeline. U-17020, *supra*, p 22. In one instance, the Commission even rejected an intervenor's attempt to introduce an official government report of a 2010 oil spill on Line 6B as a "red herring," not relevant, and that it did "not address [the] current application". *Id.* at 27. Lastly, Enbridge witness Mark Sitek stated that his testimony would "reaffirm the public need" and benefits of the "***project***," not the existing pipeline and certainly not the Lakehead pipeline system, which traverses from North Dakota to

Ohio.[6] As U-17020 and *Wolverine* illustrate, the scope of review proposed by the Joint Appellants to encompass everything and anything tangentially related to a pipeline system has no precedential basis and the Commission should reaffirm its well-established Act 16 standards in this case.

2. The public need determination is constrained by the activity proposed in the application.

The second factor in determining the proper scope of the case is the "activity proposed in the application." Initial Ruling, p 14. As explained above, and described by the case heading, the application proposes to replace and redesign an existing pipeline segment that will be relocated beneath the Straits in a utility tunnel. Remand Ruling, p 19. The Joint Appellants argue that the activity proposed is far more involved and requires review of the entire Line 5 pipeline system. To accomplish this goal of an expanded review, the Joint Appellants conflate the public need for the project with the public need for "extending" or "continuing" the life of Line 5. See, e.g., MEC Br, p 6; BMIC Br, p 22; FLOW Br, p 8; Climate Orgs Br, p 19. Not only do the Joint Appellants distort "public need" by broadening the "pipeline" under review; they include a new requirement that the applicant demonstrate need for a previously authorized pipeline to continue to operate into the future.

---

[6] MPSC Case No. U-20763, Company Witness Mark Sitek Direct Testimony, 6 TR 287 (emphasis added.)

The Joint Appellants ask the Commission to speculate on the future of Line 5 by assuming that approval of the application will extend the life of the pipeline and denial of the application will somehow make the date the existing pipeline ceases to operate closer. While the Notice has fueled the argument that Line 5 will be shut down, it is still inappropriate to assume that this will happen given the uncertainty that surrounds ongoing litigation. Moreover, the life and use of Line 5 is not necessarily dependent on the age of the existing pipeline, but rather economics. Although Enbridge may occupy the utility tunnel for 99 years, that does not mean that it necessarily will. That figure is a maximum amount of time, not a statement on how long Line 5 will operate. It is entirely possible that Line 5 could cease to operate regardless of the Commission's decision in this case. For example, Enbridge might experience a loss of supply, loss of demand, or experience other economic drivers not relevant to this case.

The Joint Appellants also conflate investment in a pipeline with extending the life of a pipeline, even though pipeline operators are expected to secure the continued safe operation of an asset. Under the 1953 MPSC Order and PHMSA's regulation, 49 CFR 195, Enbridge is required to maintain its pipeline as long as it chooses to utilize Line 5 to transport hazardous liquids. As threats arise, Enbridge must mitigate the issue and repair or replace the affected segment. Any repair, replacement, or improvement of an existing pipeline could theoretically "ensure continued operation" of the pipeline because all pipelines, as infrastructure, require continuous investment to stay in safe, working order. The cumulative effect of

maintenance over many years may also extend the useful life of the physical asset. With that said, the Commission did not consider the instant proposal to be "mere maintenance," but not because the project could extend the life of Line 5. MPSC Case No. U-20763, 6/30/2020 Order, p 67. Rather, it was considered new construction and the project involves relocation of a pipeline segment and may involve changes to pipeline diameter. *Id.* at 62-67. Simply because a project has a positive long-term effect on a piece of infrastructure from a safety or operational perspective should not automatically require review of the entire pipeline system. Indeed, the ALJ agreed that "to accept the Parties contention that under Act 16 any project that extends the lifespan of a pipeline somehow extinguishes the existing approval to the point that requires a reexamination of the entire pipeline is untenable." Remand Ruling, p 15 n 8.

Lastly, the Joint Appellants argue that they should be able to rebut assertions that the proposed project extends the operational life of Line 5 because Enbridge itself made it an issue. See, e.g., MEC Br, p 13. In pre-filed testimony, Enbridge witness Marlon Samuel asserts the company will continue to use Line 5, "well into the future after the completion of the Project." Pre-filed Testimony of Marlon Samuel, p 5. The Joint Appellants misinterpret Mr. Samuel's statement for two reasons. First, Enbridge already has the authority to use Line 5, subject to requirements in the law, the 1953 MPSC Order, and PHMSA regulations. Mr. Samuel's statement addresses nothing other than affirmation of that authority. Second, the statement of a witness cannot supplant or extend the Commission's

jurisdiction or scope of review. Indeed, an applicant may submit more information than what is necessary and, whether this information is or is not admissible, does not affect the Commission's jurisdiction.

3. Government-to-government consultation cannot expand the Commission's Act 16 jurisdiction.

Staff agrees with BMIC that the Commission should consider reasonable and prudent alternatives to the proposed pipeline project, including certain impacts of the tunnel, the need for replacing and relocating the existing dual pipelines, and how the project impacts relevant treaty rights, such as fishing rights in the Straits. Indeed, that position is entirely consistent with the ALJ's Rulings. Initial Ruling, p 14 ("it is not in dispute that the Tribal nations have treaty rights in the Straits and other areas where Line 5 is located.") Where Staff diverges is whether the Commission may consider the continued operation of Line 5, or other segments of Line 5, as relevant to its statutory obligations in reviewing this application under Act 16. Enbridge currently retains its right to operate Line 5. The ALJ therefore correctly excluded such evidence as irrelevant to this Act 16 application.

Staff acknowledges the important mission of the State of Michigan to require agencies to consult with "Michigan's federally recognized Indian tribes" before taking an "action" that may affect tribal interests. Executive Directive 2019-17. Staff has already initiated consultation with BMIC and several other tribes. The tribes have provided, and will continue to provide, valuable insight and recommendations to Staff on the proposed project. In its brief, BMIC expresses

concern that following issuance of the Notice, "Staff postponed consultation . . . [and] no consultation with the Tribal Intervenors about the Revocation and Termination or how it could affect the Tribal Intervenors or the scope of the case has taken place." BMIC Br, p 10. Staff acknowledges that consultation had been briefly delayed to evaluate the impact of the Notice on the case and align with the revised case schedule, but consultation has since been rescheduled for April 2021.

As the ALJ correctly ruled, BMIC and the other Tribal Intervenors have unique interests that must be honored, but "those rights cannot, standing alone, be a basis to expand the Commission's jurisdiction under Act 16." Ruling, p 15; accord *Michigan United Conservations Club v Anthony*, 90 Mich App 99, 111 (1979) (holding that the existence of a tribal fishing right does not preclude enforcement of state fishing regulations.) Staff will continue to consult with BMIC, and any other tribal government interested in the proposed project, pursuant to the Executive Directive.

B. The 1953 MPSC Order establishes the public need for Line 5 and to revisit that determination in this case implicates the Administrative Procedures Act.

In the Joint Appellants' quest to expand Act 16 jurisdiction in this case to include review of Line 5 in this pipeline replacement and relocation application or challenge the need for Line 5 to continue to operate into the future, they undermine what the Commission has already determined. As the ALJ concludes, "[t]he 1953 Order issued under Act 16 establishes that Line 5 serves a public need and is in the public interest." Remand Ruling, p 16. Because the 1953 MPSC Order does not

expire or require renewal, it remains in effect. *Id.* To hold otherwise in this case, virtually reverses a Commission order, and puts the applicant in a position of defending the validity of a previously authorized license, implicating, and potentially violating the Administrative Procedures Act ("APA"). *Id.* at 16-18. The Joint Appellants may challenge the need for Line 5, or the need for Line 5 to continue into the future, but this Act 16 application case is not the place to do so.

1. The 1953 MPSC Order establishes the public need for Line 5 and that designation remains in effect until properly reversed or revoked.[7]

The Joint Appellants undermine the 1953 MPSC Order by asserting the Commission did not properly consider the public need for Line 5, it was never affirmed on appeal, or that the age of the Order somehow diminishes its validity. For example, MEC argues that the 1953 MPSC Order made "no" finding of public need. MEC Br, p 22. But the Commission undoubtedly considered the benefits of the project to the public. See, e.g., *In re Application of Lakehead Pipeline Co*, MPSC Case No. D-3903-53.1, 3/31/1953 Opinion and Order, p 3 ("delivery of crude oil for joint defense purposes would be greatly enhanced by operation of the proposed pipeline.") While the Commission did not use the words "public trust" or "public

---

[7] FLOW misstates Staff's position by claiming that, "[t]he staff sided with Enbridge that the evidence on the public need was foreclosed by the 1953 Order." FLOW Br, p 8. Staff agrees with the ALJ that the public need for Line 5 has already been determined by the Commission, but the public need for the current application is yet to be decided. In addition, Staff opposed Enbridge's request for declaratory relief and sidestep Act 16 approval for the project.

need," it explicitly rejected the claim that Line 5 was "not in the public interest." *Id.* at 8. Also, in a concurring opinion, Commissioner John Veale concluded that Lakehead's "operations in Michigan are affected with a public interest" and that the case was "of considerable import to the United States, the Dominion of Canada, the Province of Ontario, and ***the State of Michigan***." *Id.* at Concurring Opinion, p 1. (emphasis added.) The Michigan Supreme Court even affirmed the public's interest in the project when it held that "[t]he private benefit, if such there is, is merely incidental to the main [public] purpose." *Lakehead Pipe Line Co v Dehn*, 340 Mich 25, 40 (1954).

Staff acknowledges that the standards for approving an Act 16 application have become more involved over the decades, but the legal effect of the 1953 MPSC Order remains. The Commission approved Enbridge's right to operate Line 5 in Michigan and the Commission speaks through its orders. *In re Consumers Energy Co.*, MPSC Case No. U-14981, 7/27/2006 Order, p 4.[8] The Joint Appellants may disagree with the Commission's decision, but they fail to cite a single case where prior approval for a pipeline must be reexamined in light of a new or updated legal test to continue to operate.

[8] Although Lakehead Pipe Line Co. received the authorization to operate Line 5 in 1953, the Commission approved the transfer of Lakehead Pipe Line Co.'s assets, including Line 5, to Lakehead Pipe Line Co., Limited Partnership, which changed its name to Enbridge Energy, Limited Partnership in 2002. MPSC Case No. U-9980, 11/8/91 Order.

The Notice also does not revoke or rescind the 1953 MPSC Order under the public trust doctrine as FLOW alleges. To begin, the Department of Environment, Great Lakes, and Energy ("EGLE") has already issued a permit to Enbridge for the project that can only be authorized upon a finding that the adverse effects to the public trust are minimal. Remand Ruling, p 12. Beyond that, the responsibilities of the Commission and other agencies differ. When reviewing an Act 16 application, the Commission is focused on siting a pipeline and associated fixtures and facilities in a reasonable manner, see MCL 483.6, while the Governor and DNR, when reviewing an easement, are focused on conveying property interests with just and reasonable terms and conditions. See MCL 324.2129. Although Act 16 addresses condemnation and easements to the extent that an easement is required from a private landowner, MCL 483.2, 483.2a, it does not address easements crossing state land (with the exception of highways). The power to grant easements for pipelines crossing state lands was given to the Conservation Commission, through 1953 Public Act 10, and its successor the DNR through the Natural Resources and Environmental Protection Act. MCL 324.2129. FLOW has not cited ***any*** cases applying the public-trust doctrine to a state agency other than DNR and its predecessor. And as the agency tasked with granting easements over state lands, it makes sense that the DNR would assume primary responsibility for ensuring that easements are granted consistent with the public trust and on just and reasonable terms.

Although the Governor and the DNR noted that the 1953 MPSC Order did not make any findings with respect to the public trust, they did not suggest that it was the Commission's responsibility to make such findings or that the Commission violated the public-trust doctrine. Concerning the 1953 Easement, the Notice specifically alleges it "violated the public trust doctrine from its inception," (Notice, p 5), but when characterizing the Commission's 1953 MPSC Order, the Notice is far more guarded. All the Notice says about the Order is that "contemporaneous ***approval of the construction*** of what is now Enbridge's Line 5 in Michigan by the Michigan Public Service Commission ("PSC") [in the 1953 MPSC Order] lacked any such public trust findings and determinations." *Id.* (emphasis added.) They acknowledge that the primary purpose of the Commission's 1953 review was to approve construction of the pipeline. The Notice refers to the 1953 MPSC Order as an aside, noting that it did not cure the Conservation Commission's alleged failure to consider the public trust. This does not undermine the 1953 MPSC Order for the purpose it was intended: approving the construction of Line 5 and otherwise fulfilling Act 16 obligations.

Further, through Act 359, the Legislature has reaffirmed the public need for the proposed project in 2018. The Act provides that the tunnel is "for the benefit of the people of this state and constitute[s] a public purpose." MCL 254.324a(5). Thus, whatever can be concluded about the 1953 Easement, or even the 1953 MPSC Order, the Michigan Legislature has conclusively determined that the limited

project at issue in this case is within the public interest. As explained above, the Governor's and DNR's Notice does not undermine this conclusion.

2. Revisiting the public need determination of Line 5 in this case implicates the Administrative Procedures Act.

Even if one concludes that the 1953 MPSC Order is legally deficient or fails to establish the need for Line 5, the APA requires an appropriate hearing to make that determination. Remand Ruling, p 16 (citing *Rogers v Michigan State Board of Cosmetology*, 68 Mich App 751 (1976)) (noting that none of the steps for a *Rogers* hearing "have or will be taken in this case".) Enbridge has been operating Line 5 under the auspices of the Order for decades. Staff acknowledges that the parties do not explicitly seek to revoke Enbridge's prior approval to operate Line 5 in this case, however, requiring an Act 16 applicant to again demonstrate a public need for an existing pipeline in this case—a case initiated by Enbridge, not the Commission—effectively achieves the same result. It forces the applicant to defend previously litigated battles instead of defending the merits of the proposed project. The Joint Appellants admittedly challenge whether Line 5 can and should continue to operate into the future although framing the application as a "new license." See, e.g., MEC Br, p 24. To be fair, Staff does not dispute that Enbridge is seeking a "new license"—a license to redesign a 4-mile pipeline segment and relocate it beneath the Straits. However, the Joint Appellants do not, and cannot, cite any substantive law that a pipeline that has been determined to be in the public interest must once again prove those benefits in an Act 16 proceeding to continue to operate into the

future. As explained above, the 1953 MPSC Order does not expire nor require renewal. Remand Ruling, p 16; see also Initial Ruling, p 15 ("[N]either the Joint Response nor FLOW provide any substantive basis to determine the review of the project proposed in the Application requires a review of the operation of Line 5 in its entirety.") The APA provides the mechanism whereby the Commission may review a prior designation of need, and if warranted, revoke or terminate that designation. To permit review of the 1953 MPSC Order in this case under the guise of simply reviewing whether that need should continue into the future would undermine the Commission's orders and have a chilling effect on utilities across the state, especially future Act 16 applicants interested in obtaining Commission approval for relocating segments in an existing pipeline.

Because the APA is implicated in this case, an expanded scope of review that includes an analysis of the continued public need for Line 5 must be properly noticed. MCL 24.292(1). As the case is currently situated, proper notice over the expanded scope advocated by the Joint Appellants may not have occurred. In addition to the required notice for the applicant, additional parties may have intervened in the case if it had been known that the Commission intended to reexamine the public need for Line 5. Staff raised the issue of notice for additional parties, such as shippers and producers interested in intervening because their right to ship on Line 5 in the future may be at stake. (Prehr'g, 2 TR 203.) For these reasons, among many others, the ALJ rightfully excluded evidence pertaining to the

operation of Line 5 in its entirety, including the public need for that pipeline and its continued operation.

C. The scope of MEPA is restricted to the conduct proposed in the application and authorized under Act 16.

In his Remand Ruling, the ALJ affirmed the conclusion reached in his prior ruling that the "conduct subject to review under MEPA is the proposal to relocate the dual pipelines into a Utility Tunnel . . . [and does not extend to] the environmental effects of both the Line 5 system, and the extraction, refinement, and ultimate consumption of oil shipped on that system." Remand Ruling, p 19. In addition, the Notice "does not change the authority under which Line 5 operates, and thus the operation and safety of that system is outside the conduct subject to review under MEPA . . [and] does not provide the substantive legal basis in Michigan law . . . to expand the MEPA review." *Id.* at 20. Staff agrees with the ALJ that the appropriate MEPA analysis for this case is limited by the activity proposed in the application and the Commission's Act 16 jurisdiction. The conduct at issue does not involve the entire Line 5 system including alternatives to the entire system for transporting petroleum products, and does not involve the extraction, refinement, or consumption of petroleum products. Indeed, granting the Joint Appellants' relief with respect to expanding the Commission's MEPA review to include global climate change considerations from the end use of transported

petroleum products would fundamentally transform the Commission's review of Act 16 pipeline applications in Michigan, with no basis in precedent or statute.[9]

Under MEPA, the Commission must evaluate the application's proposed "conduct" that shall not be authorized or approved if it "has or is likely to have such an effect" that "pollut[es], impair[s] or dest[roys] . . . [the] natural resources, or the public trust in these resources." MCL 324.1705(2). If the conduct is considered harmful pursuant to the statute, the Commission must analyze a "feasible and prudent alternative" to that conduct. *Id.* The extent of the Commission's MEPA review therefore turns on the "action" or "conduct" described in the application and authorized under Act 16. *Attorney General ex rel. Natural Resources Com'n v Balkema*, 191 Mich App 201, 206 (1991). The parties dispute what conduct is at issue in this case. Although the ALJ has ruled twice on what conduct is to be considered, the Joint Appellants advocate for an expansive MEPA review by redefining the proposed conduct.

---

[9] The Joint Appellants fail to cite a single Commission case where greenhouse gas emissions were considered as part of the Act 16 or Act 9 approval process even though MEPA has been law for nearly 30 years. In addition, some states have legislatively incorporated greenhouse gas emissions into the calculus for considering and issuing permits, licenses, and other administrative approvals. For example, in 2008, Massachusetts passed the Global Warming Solutions Act. The Act requires that a "respective agency, department, board, commission or authority" in deciding whether to issue an administrative approval, "shall also consider reasonably foreseeable climate change impacts, including additional greenhouse gas emissions, and effects, such as predicted sea level rise." 2008 Mass. Legis. Serv. Ch. 298, Sec. (7). Michigan, however, has no such legislative directive.

As the ALJ stated, "the conduct in this case is the activity proposed in the Application and subject to the Commission's jurisdiction under the Act." Initial Ruling, p 18. The present application proposes to replace and relocate a segment of Line 5 beneath the Straits and house the pipeline segment in an underground utility tunnel. *Id.*; Remand Ruling, p 19; MPSC Case No. U-20763, 6/30/2020 Order, pp 1, 62. Although MEC admits that "Enbridge's tunnel replacement is the conduct under review," they tie in their erroneous interpretation of Act 16 and Commission precedent that the conduct under review must necessarily include "the impact of [Line 5's] continued operation on the environment." MEC Br, p 30-31. Staff responds to MEC's proposed MEPA scope in two ways. First, Enbridge is not seeking authorization or approval to operate Line 5 in this case. Line 5 has been operating since 1953 and as the ALJ concluded, the 1953 MPSC Order does not expire or require renewal. The impact of "continued operation" has no basis in Act 16, MEPA, or precedent. Second, MEC's interpretation renders "feasible and prudent alternative[s]" to the conduct meaningless. The alternative to "continued operation" is not continuing to operate. Notwithstanding the *Rogers* requirements implicated in revoking the right of an authorized pipeline to continue to operate, the statute likely included the words "feasible" and "prudent" for good reason. See *Benedict v Dept of Treasury*, 236 Mich App 559, 567 (1999) (stating that when possible, the Court should avoid a "construction that renders any statutory language surplusage, nugatory, absurd, or illogical.") (internal citations omitted.)

Likewise, the Climate Organizations argue that the Notice has changed the proposed conduct from replacing and relocating a pipeline into a utility tunnel to "restarting a decommissioned pipeline." Climate Orgs Br, pp 1-2, 9. To begin, the Climate Organizations rely on the assumption that the dual pipelines, and by extension Line 5, have been decommissioned and shut down. At present, this has not occurred and given ongoing litigation over the legal effect of the Notice and Enbridge's stated intentions, it is unclear when, if at all, this would occur. Remand Ruling, pp 13-14. In addition, Staff agrees with the ALJ that even if the dual pipelines are decommissioned in May 2021 pursuant to the Notice, Enbridge retains its original authorization to operate Line 5. *Id.* at 18. Unless significant changes are proposed to a hypothetical restarted pipeline, i.e., changes in location or capacity, the prior approval would likely not need to be reauthorized under Act 16. See MPSC Case No. U-20763, 6/30/2020 Order, p 66 (listing the two factors that commonly require Act 16 approval as "change in diameter or relocation of the pipeline.")

The Joint Appellants also misinterpret MEPA's requirement that an agency must review the effects the proposed conduct "has or is likely to have" on the environment. For example, the Climate Organizations argue that MEPA requires the Commission to analyze, "the direct and indirect environmental impacts, because it instructs agencies to consider both conduct that has and conduct that is likely to have the effect of polluting, impairing, or injuring the environment." Climate Orgs Br, p 15. However, the Climate Organizations interpretation of MEPA is divorced

from the text of the statute for the Commission to consider "direct and indirect" impacts. The Climate Organizations ask that the Commission analyze "indirect emissions" (*Id.* at 22) related to the Act 16 application, inevitably broadening the Commission's review to greenhouse gas emissions related to extraction, refinement, and even consumption of the petroleum products transported through Line 5. The Climate Organizations highlight MEPA's requirement that the Commission consider conduct "likely to have" negative environmental impacts as language that authorizes an expansive review. Staff posits that "has/likely to have" and "direct/indirect" are fundamentally distinct dichotomies. The former concerns probability, while the latter concerns proximity. The statute does not discuss direct or indirect environmental impacts—only those impacts that the conduct under review has, or is likely to have, on the environment.

The Joint Appellants erroneously rely on a Michigan Court of Appeals' decision as support for its indirect impact argument. Climate Orgs Br, p 16, n 48 (citing *Preserve the Dunes, Inc v Dep't of Environmental Quality and Technisand, Inc*, 264 Mich App 257, 265 (2004)); see also MEC Br, pp 30-32. As the ALJ determined, the *Preserve the Dunes* court made no finding about the consideration of indirect impacts from conduct outside of the proposed project. Remand Ruling, p 20, n 13. The plaintiffs in *Preserve the Dunes* challenged a permit issued by the Department of Environmental Quality ("DEQ") to a mining operation in an area protected under the Sand Dune Mining Act ("SDMA"). *Id.* at 259–260. The plaintiffs argued that the trial court erred by considering the effect of the permitted

activities on the "total critical dune area in the state because each and every critical dune area must be protected unless one of the two exceptions [] applies." *Id.* 263. The court applied an opinion by the Michigan Supreme Court explaining that the MEPA challenge should be evaluated under the SDMA section requiring DEQ to deny such permits if "the proposed sand dune mining activity is likely to pollute, impair, or destroy the air, water, or other natural resources or the public trust in those resources, as provided by [MEPA]." *Id.* at 265–266 (citing MCL 324.63709; *Preserve the Dunes, Inc v Dep't of Environmental Quality*, 471 Mich 508, 521 (2004)). As a result, the court found that "in a MEPA action involving the SDMA . . . the statute requires the trial court to use an approach that assesses the total effect of the sand dune mining on the environment, not just the effect on the particular location from which sand is to be removed." *Id.* The "total effect" language used by the court referred specifically to cases involving the SDMA. But more importantly, the court did not state that MEPA required the review of indirect environmental impacts arising out of actions beyond the proposed conduct. It merely found that it would not stop its review of the proposed conduct's impact at the borders of the project site.

The Joint Appellants cite multiple federal cases addressing the National Environmental Protection Act ("NEPA") in an effort to provide analogous, though nonbinding, decisions regarding the review of indirect greenhouse gas emissions in administrative proceedings. Climate Orgs Br, pp 15-20; BMIC Br, p 39 n 113. This case law fails to justify overturning the ALJ's Rulings for two reasons. First, these

decisions do not address MEPA. *See In re Reliability Plans of Elec Utilities for 2017-2021*, 505 Mich 97, 119 (2020) ("Statutory interpretation begins with examining the plain language of the statute. When that language is clear and unambiguous, no further judicial construction is required or permitted.") These decisions address the separate federal environmental protection framework and are, therefore, not binding in the present case. Second, the underlying conduct at issue in these cases is distinguishable from the conduct proposed in Enbridge's application. The determinations of specific impacts to be considered are inapplicable here.

Finally, the Joint Appellants argue that regardless of the conduct at issue, MEPA already authorizes review of greenhouse gas emissions because they inherently pollute, impair, or destroy the environment and that "courts should adapt to evolving understandings of the environmental impacts of any pollutants." Climate Orgs Br, p 32; see also BMIC Br, p 36. Staff does not dispute that greenhouse gas emissions could be an appropriate consideration in certain regulatory contexts. Indeed, the Commission has encouraged utilities to document their greenhouse gas emissions in integrated resource planning. *In the matter, on the Commissions' own motion to implement the provisions of Section 6t(1) of 2016 PA 341*, MPSC Case No. U-18418, 11/21/2017 Order, p 5. However, Staff agrees with the ALJ's Rulings that irrespective of the environmental harm the Joint Appellants contend is caused by greenhouse gas emissions, "MEPA requires an examination of the 'conduct' to determine its effect on natural resources" and "the conduct at issue

in this case does not include the extraction, refinement, or consumption of the oil transported on Line 5." Initial Ruling, p 18-19. In an effort to expand the categories of pollutants the Joint Appellants request the Commission to consider, they ignore the statute's operative clause to review the proposed conduct of an Act 16 applicant seeking agency approval.

IV. Conclusion

For the above reasons, if the Commission grants the Joint Appellants' Applications for Leave to Appeal, Staff respectfully requests that the Commission affirm the ALJ's Rulings in their entirety.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

Spencer A. Sattler (P70524)
Benjamin J. Holwerda (P82110)
Nicholas Q. Taylor (P81020)
Assistant Attorneys General
Public Service Division
7109 W Saginaw Hwy.
Lansing, MI 48917
Telephone: (517) 241-6680

Dated: March 23, 2021

Attachment A

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of LAKEHEAD PIPE LINE COMPANY, INC. for approval of construction and operation of a common carrier oil pipe line.	D-3903-53.1

At a session of the Michigan Public Service Commission held at its offices in the city of Lansing on the 31st day of March A. D. 1953.

PRESENT: Hon. John H. McCarthy, Chairman
Hon. Maurice E. Hunt, Commissioner
Hon. John M. Veale, Commissioner

OPINION AND ORDER

On the 2nd day of February 1953, the Lakehead Pipe Line Company, Inc. (Lakehead), a Delaware corporation, with its principal office located at 100 W. Tenth Street, City of Wilmington, County of New Castle, Delaware, and with its present Michigan office at 1881 National Bank Building, Detroit, Michigan, a wholly owned subsidiary of Interprovincial Pipe Line Company, a Canadian corporation, filed with this Commission an application requesting approval of the location and construction of a 30" O.D. welded steel pipe line including two 20" O.D. welded steel pipe lines across

the Straits of Mackinac, together with the fixtures and equipment appurtenant thereto for the purpose of carrying and transporting crude oil and petroleum as a common carrier in interstate and foreign commerce, the proposed location of said lines within Michigan being described generally as follows:

> Entering the State of Michigan from the State of Wisconsin at a point near Ironwood, Michigan, thence proceeding in an easterly direction through the counties of Gogebic, Iron, Dickinson, Marquette, Delta, Schoolcraft and Mackinac to a point on the north boundary of the Straits of Mackinac, thence in a southerly direction under said Straits to a point on the south boundary thereof, thence in a southeasterly direction through the counties of Emmet, Cheboygan, Otsego, Crawford, Oscoda, Ogemaw, Arenac and Bay to a point between Saginaw and Bay City, thence in a southeasterly direction through the counties of Tuscola, Lapeer, Sanilac and St. Clair to a point on the international boundary in the St. Clair River, south of the City of Port Huron. (The above route is subject to minor changes after an on-the-ground survey, presently in progress, has been completed).

After due and proper notice, hearing was held on this matter at the offices of the Commission in Lansing, Michigan, on the 20th day of March A. D. 1953. Appearances for intervenors were entered by counsel for Michigan-Ohio Pipeline Company; Township of Denmark, Tuscola County; Tuscola County Drain Commission; and a group of land owners in Bay County along the proposed right-of-way consisting of John G. Zeigler, et al. Representatives were also present from Township Boards, County Road Commissions and from the State Highway

Department.

At the hearing, applicant requested permission to amend its application by inserting the words "operation and maintenance" after the word construction in the final paragraph of the petition, and objection thereto was made by counsel for Denmark Township, Tuscola County.

It appears to the Commission that such amendment would not prejudice any of the parties present at the hearing, and if re-noticed and re-heard would not include any additional parties not having received notice of the instant hearing. It is immediately apparent that the pipe line, if constructed, must be operated and maintained in the same location where constructed, hence such amendment, but makes specific what is otherwise reasonably implied; therefore, the amendment to the application is proper and is hereby received.

The proposed pipe line above described is an extension of an existing pipe line owned and operated by petitioner, Lakehead Pipe Line Company, Inc., as a common carrier, for the transportation of crude oil and petroleum in interstate and foreign commerce from the international boundary between the United States and Canada near Neche, North Dakota, to Superior, Wisconsin.

The sole present source of oil for this pipe line is the Interprovincial Pipe Line Company, which in turn has its source of supply from the Redwater area north of Edmonton,

Alberta, Canada. The Petroleum Administration for Defense has given priority for materials for this pipe line. It appears to this Commission that in times of national emergency delivery of crude oil for joint defense purposes would be greatly enhanced by operation of the proposed pipe line.

The petitioner filed with its petition a map or plat of such proposed pipe line showing the approximate route to be traversed. Upon completion of the pipe line a more detailed map will be filed showing the exact location of the pipe line as laid.

It is not anticipated that any pumping stations will be built in Michigan in 1953, but as the throughput increases according to the present forecast of the petitioner, additional pumping stations will be built in Michigan at or near the following locations:

Watersmeet, Gogebic County
Gulliver, Schoolcraft County
Indian River, Cheboygan County
Bay City, Bay County.

It was represented by the petitioner that the proposed pipe line will be constructed of 30" O.D. x 9/32" high strength expanded, welded pipe. At the discharge of the No. 1 Pump Station at Superior, Wisconsin, there will be a few miles of 5/16" or 11/32" wall pipe. River crossings will be made using 30" x 1/2" wall pipe of the same specification. The Mackinac Straits crossing will consist of two parallel lines

laid approximately 1,000 ft. apart and these lines will be 20" x .812" wall thickness.

It was further represented by the petitioner that the specifications of the pipe to be used are as follows:

30" Pipe will be constructed to API specifications 5LX-52, having a guaranteed minimum yield strength as follows:

1. For thicknesses 3/8" and below, 52,000 psi.
2. Thicknesses 7/16" to 3/8" have 48,000 psi.
3. Thicknesses 1/2" to 7/16", 46,000 psi.

The 20" schedule 60 (.812" wall) pipe is API specifications 5L Grade A.

The joints will be made by welding except where otherwise required as in the case of insulating flanges and certain control valves.

The pipe line will be designed for a normal operating pressure at the pumping stations of 500-550 pounds per square inch except for the first station at Superior, Wisconsin, which may operate at approximately 700 pounds per square inch until station 2 is put into operation.

The minimum mill test pressure is approximately 138% of the maximum allowable working pressure of the pipe in the line. After completion of construction, a test pressure of 740 psig at the outlet of the Superior pumping station will be placed on the line under "no flow" conditions. The minimum test pressures and the allowable working pressures for various diameters and wall thicknesses of pipe to be used are approximately as follows:

Size	Minimum Mill Test Pressures	Maximum Allowable Working Pressures
30" x 1/2"	1242 lbs. per sq. inch	894 lbs. per sq. inch
30" x 11/32"	965 lbs. per sq. inch	695 lbs. per sq. inch
30" x 5/16"	878 lbs. per sq. inch	632 lbs. per sq. inch
30" x 9/32"	790 lbs. per sq. inch	570 lbs. per sq. inch
24" x 5/16"	1097 lbs. per sq. inch	790 lbs. per sq. inch
20" x .812"	1700 lbs. per sq. inch	1200 lbs. per sq. inch

The capacity of the pipe line with no pumping stations in Michigan will be 120,000 barrels per day and when all of the above pumping stations are constructed and in operation the capacity will be 300,000 barrels per day.

The portion of the line that is buried will have a minimum cover of 36" except that in rock the minimum cover will be 24". In rivers, creeks, ditches, ravines and similar locations the minimum cover will be 48".

The entire pipe line will be properly cleaned, primed and coated with a single application of coal tar. The coating will be reinforced by a spiral wrap of glass material and covered by a spiral wrap of special glass outer wrap. Preparations will be made for cathodic protection.

The entire pipe line will be designed in accordance with conservative pipe line practices and under codes applicable to such pipe lines. The presently proposed line and future pump stations will be designed in accordance with the A.S.A. Code for Pressure Piping (Code) where this code is applicable.

The Code provides for two classes of construction for oil transmission pipe lines, namely, Division A and Division B. The Division A requirements allow greater factors of safety and, among other places, are imposed inside cities and villages within the developed residential, business, and industrial areas. In this case the present information does not permit a determination as to whether there would be any Division A construction required, though it is stated that the line is expected to pass within the corporate limits of four cities and villages.

The petitioner, being engaged in interstate and foreign transportation of crude oil and petroleum, must file its tariffs or schedule of rates and charges with the Interstate Commerce Commission. Although the petitioner contemplates providing take-off points for the delivery of crude oil in Michigan, tariffs for any delivery points in the State of Michigan have not yet been determined but when determined and filed with the Interstate Commerce Commission, copies thereof will be supplied to this Commission.

The petitioner has filed its explicit authorized acceptance of the provisions of Act 16, P.A. 1929, as amended.

The Prosecuting Attorney of Tuscola County on behalf of Tuscola County Drain Commissioner, having requested that any grant of authority to applicant contain certain reservations in favor of the County Drain Commissioner, and it appearing to this Commission that such reservations are not

within this Commission's jurisdiction in the matter, but are more properly the subject of negotiation between the parties under other provisions of Act 16, P.A. 1929, as amended, the request hereinbefore mentioned is denied. However, it is recommended that the applicant incorporate the foregoing reservations in its future negotiations with the Drain Commissioners of this state.

Examination of witness T. S. Johnston, President of Lakehead, was of such probative value that the witness agreed to a change in policy employed by agents of the company in obtaining options for right of way. Also, testimony as to the method employed in replacing land drain tile displaced by construction would appear to be reasonable and a conscientious attempt on the part of the petitioner to safeguard private property. While the scope of the examination was in some respects beyond the ordinary jurisdiction of this Commission, we are of the opinion that by reason of statements and correspondence in the file on this matter the applicant intends to operate so as to create a minimum of hardship to the landowners.

Counsel for Denmark Township, Tuscola County and property owners in Bay County moved that the application be denied and in support thereof contended that the proposed project was not in the public interest and that the applicant intended to conduct a private business thereby excluding applicant from the provisions of Act 16, P.A. 1929, as amended. However, the Commission deems these contentions to be without merit and the motions based thereon are hereby denied.

After careful consideration of this matter the Commission FINDS that the petitioner should be authorized to construct, operate and maintain this line as a common carrier as represented by the applicant.

NOW THEREFORE, IT IS HEREBY ORDERED by the Michigan Public Service Commission that the Lakehead Pipe Line Company, Inc. be and the same is authorized to construct, operate and maintain as a common carrier the 30" oil pipe line consisting of approximately 630 miles of 30" O.D. pipe and approximately 10 miles of 20" O.D. pipe (the latter to be used for crossing the Straits of Mackinac), said pipe line to be constructed of the material and over the route as hereinbefore described.

IT IS FURTHER ORDERED that the specifications filed with the petition and presented at the hearing are hereby approved and the said pipe line shall be constructed in accordance therevith; and, in all cases the construction shall be equal to or better than that prescribed for oil transmission pipe lines by the Code for Pressure Piping as approved by the American Standards Association.

IT IS FURTHER ORDERED that detailed information shall be furnished the Commission, prior to actual construction, on the location and character of buildings within 150 feet of the pipe line in all incorporated cities or villages through which the line passes, at which time the Commission will determine whether Division A or Division B construction shall be required at such locations.

IT IS FURTHER ORDERED that the petitioner shall comply in all respects with the provisions of Act 16 of the Public Acts of Michigan for 1929 subject to all the duties and obligations thereby imposed, and with all the rights and privileges by said Act conferred.

IT IS FURTHER ORDERED that the map or plat filed by the petitioner with the Commission be and the same is hereby approved and that within 90 days after the completion of the construction of said line the petitioner shall file a more detailed map showing the exact location of the said pipe line as laid.

The Commission hereby specifically reserves unto itself jurisdiction of this matter and the right to make any other or further orders herein which in its judgment should be hereafter made.

(S E A L)

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John H. McCarthy
Chairman

By the Commission and
pursuant to its action
of March 31, 1953

S. A. LUND
Its Secretary

/s/ Maurice E. Hunt
Commissioner

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of LAKEHEAD PIPE LINE COMPANY, INC. for approval of construction and operation of a common carrier oil pipe line.	D-3903-53.1

CONCURRING OPINION

Upon consideration of the record in these proceedings and the argument of counsel relating thereto, I concur in the opinion of the Commission that applicant is a common carrier of property and that its operations in Michigan are affected with a public interest. The order therefore, giving applicant the benefit of Act 16, P.A. 1929, as amended, is proper.

This matter is of considerable import to the United States, the Dominion of Canada, the Province of Ontario, and the State of Michigan. Accordingly, I believe some clear expression of broad policy and economic aspects should be made.

Applicant proposes to transport property as a common carrier for hire between two points in the Dominion of Canada, traversing, inter alia, some 630 miles in the State of Michigan. The property to be transported will originate in the Province of Alberta and be delivered to the Province of Ontario. This

transportation will be of great mutual benefit to these provinces. To permit this, the State of Michigan hereby confers upon Canadian citizenry the right to construct and operate the facilities required to perform such transportation, including the right to condemn the property of Michigan citizens.

This action, in my opinion, is justified as a step in the development of proper international, provincial and state trade cooperation. Its import, and similarity to certain other trade problems, should not be overlooked by our Canadian neighbors, particularly by brethern in the Province of Ontario. Therefore, I sign this order with the hope that it will take its place as an integral part of the movement for the freer exchange of trade and transportation facilities by the various governments herein concerned.

(S E A L)

/s/ John M. Veale
John M. Veale, Commissioner

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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.	Case No. U-20763 (e-file paperless)

/

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF EATON)

Pamela A. Pung, being first duly sworn, deposes and says that on **March 23, 2021,** she served a true copy of **Michigan Public Service Commission Staff's Response Brief in Opposition to Joint Appellants' Applications for Leave to Appeal the Administrative Law Judge's Ruling on Motion *In Limine* on Remand** upon the following parties **via email only**:

ENBRIDGE ENERGY, LIMITED PARTNERSHIP Michael Ashton Shaina Reed Jennifer Heston mashton@fraserlawfirm.com sreed@fraserlawfirm.com jheston@fraserlawfirm.com	**ADMINISTRATIVE LAW JUDGE** Hon. Dennis Mack mackd2@michigan.gov **FOR LOVE OF WATER** James M. Olson Nayt Boyt jim@flowforwater.org nayt@flowforwater.org
MICHIGAN ENVIRONMENTAL COUNCIL Christopher M. Bzdok Lydia Barbash-Riley Karla Gerds Kimberly Flynn Breanna Thomas chris@envlaw.com lydia@envlaw.com	**BAY MILLS INDIAN COMMUNITY** Christopher M. Bzdok Whitney Gravelle Kathryn Tierney Deborah Musiker aka Debbie Chizewer Christopher R. Clark David L. Gover Matthew L. Campbell Mary K Rock

karla@envlaw.com kimberly@envlaw.com breanna@envlaw.com	Megan R. Condon Mary Rock Adam Ratchenski chris@envlaw.com wgravelle@baymills.org candyt@bmic.net dchizewer@earthjustice.org cclark@earthjustice.org dgover@narf.org mcampbell@narf.org mrock@earthjustice.org mcondon@narf.org aratchenski@earthjustice.org mrock@earthjustice.org
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS William Rastetter Christopher M. Bzdok Lydia Barbash-Riley Karla Gerds bill@envlaw.com chris@envlaw.com lydia@envlaw.com karla@envlaw.com	**TIP OF THE MITT WATERSHED COUNCIL** Abigail Hawley Christopher M. Bzdok Lydia Barbash-Riley Karla Gerds Kimberly Flynn Breanna Thomas abbie@envlaw.com chris@envlaw.com lydia@envlaw.com karla@envlaw.com kimberly@envlaw.com breanna@envlaw.com
NATIONAL WILDLIFE FEDERATION Chris Bzdok Lydia Barbash-Riley Karla Gerds chris@envlaw.com lydia@envlaw.com karla@envlaw.com	**ENVIRONMENTAL LAW & POLICY CENTER AND MICHIGAN CLIMATE ACTION NETWORK** Margrethe Kearney Rebecca Lazer Ariel Salmon mkearney@elpc.org rlazer@elpc.org asalmon@elpc.org
MICHIGAN ATTORNEY GENERAL DANA NESSEL Robert P. Reichel reichelb@michigan.gov	**NOTTAWASEPPI HURON BAND OF POTAWATOMI INDIANS** Amy Wesaw John S. Swimmer amy.wesaw@nhbp-nsn.gov

	john.swimmer@nhbp-nsn.gov
MICHIGAN CLIMATE ACTION NETWORK (MiCAN) Esosa Aimufua Howard Learner Kiana Courtney eaimufua@elpc.org hlearner@elpc.org kcourtney@elpc.org **LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS** James Bransky jbransky@chartermi.net **MICHIGAN LABORERS' DISTRICT (MLDC)** Christoper Legghio Stuart Israel Lauren Crummel cpl@legghioisrael.com Israel@legghioisrael.com crummel@legghioisrael.com	**MICHIGAN PROPANE GAS ASSOCIATION (MPGA)** Daniel Ettinger Troy Cumings Margaret Stalker Paul Bratt dettinger@wnj.com: pbratt@wnj.com tcumings@wnj.com mstalker@wnj.com **MACKINAW STRAITS CORRIDOR AUTHORITY (MSCA)** Leah Brooks Raymond O. Howd brooksl6@michigan.gov howdr@michigan.gov

Pamela A. Pung

Pamela A. Pung

Subscribed and sworn to before me
this **23rd** day of **March, 2021**.

De Ann M Payne

De Ann M. Payne, Notary Public
State of Michigan, County of Eaton
Acting in the County of Eaton
My Commission Expires: 11-29-24