

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application for the authority to )  
replace and relocate the segment of Line 5 crossing )  
the Straits of Mackinac into a tunnel beneath the )  
Straits of Mackinac, if approval is required pursuant )  
to 1929 PA 16; MCL 483.1 *et seq.* and Rule 447 of )  
the Michigan Public Service Commission’s Rules of )  
Practice and Procedure, R 792.10447, or the grant of )  
other appropriate relief. )  
\_\_\_\_\_ )

Case No. U-20763

At the April 22, 2020 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Daniel C. Scripps, Commissioner  
Hon. Tremaine L. Phillips, Commissioner

**ORDER**

On April 17, 2020, Enbridge Energy, Limited Partnership (Enbridge) filed an application, with supporting testimony and exhibits, pursuant to 1929 PA 16; MCL 483.1 *et seq.* (Act 16) and Mich Admin Code, R 792.10447 (Rule 447), requesting approval to replace and relocate the segment of Line 5 crossing the Straits of Mackinac into a tunnel to be constructed beneath the Straits of Mackinac (Line 5 Project). In the alternative, Enbridge seeks a declaratory ruling that it already has the requisite authority from the Commission to construct the replacement segment of Line 5 that is the subject of the application.

In its application, Enbridge avers that the Commission should determine that approval is not necessary to construct the replacement and to relocate the pipeline segment to a tunnel because the

Commission's 1953 approval of the construction, operation, and maintenance of Line 5 between the Wisconsin and Canadian borders embraces approval of the replacement of one approximate four-mile segment of Line 5. Specifically, Enbridge requests a declaratory ruling pursuant to Mich Admin Code, R 792.10448 (Rule 448) and Section 63 of the Administrative Procedures Act of 1969, MCL 24.263, that Enbridge already has the requisite authority needed from the Commission for the Line 5 Project based on the Commission's grant of authority for Line 5 in its 1953 order.<sup>1</sup>

Enbridge requests a prompt decision on its Act 16 application to construct a replacement pipeline and to relocate it to a tunnel beneath the Straits of Mackinac. Yet, Enbridge also seeks an alternative finding that the application is not needed through its request for a declaratory ruling.

The Commission finds the preferred procedural approach is to seek additional input on the threshold issue presented in the declaratory ruling request under Rule 448 before proceeding with the Act 16 application through a contested case process. Furthermore, the Commission finds it appropriate to hold the application in abeyance while it considers the request for a declaratory ruling. If the Commission issues a declaratory ruling that Enbridge already has the requisite authority needed from the Commission for the Line 5 Project, no further proceedings will be necessary with regard to Enbridge's application, thus saving the time and resources of the Commission and other interested persons. The Commission is committed to making a timely decision regarding the declaratory ruling request.

Given the public interest in this matter, the Commission also finds it appropriate to establish a comment period for any interested persons to submit comments on the request for a declaratory ruling. Such comments should only address the request for a declaratory ruling and not the merits

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<sup>1</sup> March 31, 1953 order in Case No. D-3903-53.1. *See also*, Exhibit A-3 to Enbridge's application.

of the Act 16 application itself. The Commission explicitly invites any commenters to provide a legal analysis of the issues presented in the request for a declaratory ruling, including references to statutes, rules, and prior Commission orders to which the request relates and an analysis of their applicability to the Line 5 Project in terms of characteristics.

THEREFORE, IT IS ORDERED that:

A. The Act 16 application of Enbridge Energy, Limited Partnership, requesting approval to replace and relocate the segment of Line 5 crossing the Straits of Mackinac into a tunnel to be constructed beneath the Straits of Mackinac shall be held in abeyance pending the Commission's decision on the request for a declaratory ruling.

B. No later than May 13, 2020, any interested person may submit written or electronic comments regarding the request for a declaratory ruling by Enbridge Energy, Limited Partnership. Replies to comments regarding the declaratory ruling request must be filed with the Commission no later than May 27, 2020.

C. Written comments may be addressed to: Executive Secretary, Michigan Public Service Commission, 7109 W. Saginaw Hwy., Lansing, MI 48917. Electronic comments (preferred) may be e-mailed to [mpscdockets@michigan.gov](mailto:mpscdockets@michigan.gov). All comments should reference Case No. U-20763. All information submitted to the Commission in this matter will become public information available on the Commission's website and subject to disclosure.

D. The Executive Secretary is directed to provide a copy of this order to the following persons: (1) the County of Mackinac; (2) all cities, incorporated villages and townships in the County of Mackinac; (3) the County of Emmet; (4) all cities, incorporated villages and townships in the County of Emmet; (5) the tribal governments of the Tribes of Michigan: Bay Mills Indian Community, Hannahville Indian Community, Keweenaw Bay Indian Community, Lac Vieux

Desert Band of Lake Superior Chippewa Indians, Sault Ste. Marie Tribe of Chippewa Indians, Grand Traverse Band of Ottawa and Chippewa Indians, Little River Band of Ottawa Indians, Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, Nottawaseppi Huron Band of the Potawatomi Indians, Little Traverse Bay Bands of Odawa Indians, Pokagon Band of Potawatomi Indians, and Saginaw Chippewa Indian Tribe; (6) the Michigan Department of Environment, Great Lakes & Energy; (7) the Michigan Department of Natural Resources; (8) the Michigan Department of Transportation; (9) the Michigan Department of Attorney General; (10) the Mackinac Bridge Authority; (11) the Mackinac Straits Corridor Authority; (12) the U.S. Department of Transportation's Pipeline & Hazardous Materials Safety Administration; (13) the U.S. Army Corps of Engineers; (14) the U.S. Fish and Wildlife Service; (15) the U.S. Environmental Protection Agency; (16) the U.S. Coast Guard; and (17) the Federal Energy Regulatory Commission.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungpl@michigan.gov](mailto:pungpl@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Daniel C. Scripps, Commissioner

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Tremaine L. Phillips, Commissioner

By its action of April 22, 2020.

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Lisa Felice, Executive Secretary

# PROOF OF SERVICE

STATE OF MICHIGAN )

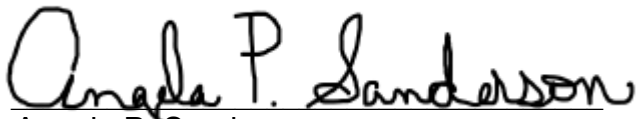
Case No. U-20763

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on April 22, 2020 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

  
Brianna Brown

Subscribed and sworn to before me  
this 22<sup>nd</sup> day of April 2020.



Angela P. Sanderson  
Notary Public, Shiawassee County, Michigan  
As acting in Eaton County  
My Commission Expires: May 21, 2024

**Service List for Case: U-20763**

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