

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

July 22, 2020

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

Dear Ms. Felice:

Re: MPSC Case No. U-20763

Enclosed find the *Attorney General's Notice of Intervention*, and related Proof of Service.

Sincerely,

Robert P. Reichel
Assistant Attorney General

cc: All Parties

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

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) MPSC Case No. U-20763
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.)
_____)

ATTORNEY GENERAL'S NOTICE OF INTERVENTION

Michigan Attorney General Dana Nessel (Attorney General) gives her Notice of Intervention, by and through Assistant Attorney General Robert P. Reichel, as a party in this proceeding. In response to the Application filed by Enbridge Energy Limited Partnership (Enbridge) 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), the Attorney General states:

I. Statement of Interest

1. Michigan Attorney General Dana Nessel is the duly elected and qualified Attorney General of the State of Michigan and holds such office by virtue of and pursuant to Const 1963, art 5, § 21, and by mandate of the qualified

electorate of the State of Michigan. She is head of the Department of Attorney General created by the Executive Organization Act, 1965 PA 380, ch 3; MCL 16.150.

2. The Attorney General intervenes and appears in this proceeding for and on behalf of the People of the State of Michigan who have an interest in the proper application of Michigan law, including Act 16 and Rule 447, to Enbridge's Line 5 Project.

3. Both statutory and common law authorize the Attorney General's intervention and appearance in this proceeding. MCL 14.28 provides, in pertinent part:

[T]he attorney general . . . may, when in [her] own judgment the interests of the state require it, intervene in and appear for the people of this state in any other court or tribunal, in any cause or matter, civil or criminal, in which the people of this state may be a party or interested.

The Attorney General has the right to intervene whenever the Attorney General, in her own discretion, deems it in the public interest to do so. *People v O'Hara*, 278 Mich 281; 270 NW 298 (1936) and *Gremore v People's Community Hosp Auth*, 8 Mich App 56; 153 NW2d 377 (1967). In her capacity as Michigan's chief law officer, the Attorney General has common law authority to represent public interests as she may deem necessary for the protection of public rights. *In re Certified Question (Wayne Co v Philip Morris, Inc)*, 465 Mich 537, 543–545; 638 NW2d 409 (2002).

4. Furthermore, when the Attorney General deems it in the public interest to do so, she may intervene in any administrative proceeding at any stage

of such a proceeding. *Attorney General v Liquor Control Comm*, 65 Mich App 88; 237 NW2d 196 (1975).

5. The Attorney General, in her judgment, has determined that the interests of the People of the State of Michigan require her to intervene in this proceeding on their behalf. This proceeding will directly affect the People of this State who have an interest in whether, and under what conditions, Enbridge's Project is implemented at the Straits of Mackinac, an area of unique ecological and economic significance. Any action taken in this proceeding will affect the environment, natural resources and economy of the State as well as the general well-being of the citizens and residents of this State.

II. Statement of Positions

6. On April 17,2020 Enbridge filed its application in this case together with supporting testimony and exhibits.

7. Enbridge's application requests the Commission to approve, pursuant to Act 16 and Rule 447, the Line 5 Project 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.

8. The Attorney General takes the position that Enbridge has the burden of proving all elements of its case by a preponderance of the evidence.

9. The Attorney General takes the position that before the Commission can approve Enbridge's Act 16 request, the Commission will consider 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.” *In re Enbridge Energy Limited Partnership*, Case No. U-17020, January 31, 2013, Order, p. 5.

12. The Attorney General takes the position that the Commission has the obligation to determine, pursuant to Part 17 (Michigan Environmental Protection Act) of the Natural Resources and Environmental Protection Act, MCL 324.1701, *et seq.* (MEPA), whether the proposed activity is likely to cause pollution, impairment or destruction of natural resources or the public trust therein, and if so, whether there is a feasible and prudent alternative. *See In re State Hwy Comm v Vanderkloot*, 392 Mich 159 (1974) and *Buggs v Michigan Public Service Commission*, Court of Appeals No. 315058, (2015); 2015 Mich App LEXIS 23* (unpublished opinion).

. In making that determination, the Commission should specifically evaluate whether the Line 5 Project, if implemented, is likely to pollute, impair and destroy natural resources and the public trust therein, by (a) perpetuating the operation of the existing Line 5 pipelines and attendant unreasonable risk of releases of petroleum products in the waters of the Straits for years until the Project is completed, and (b) promoting continued, unnecessary consumption of fossil fuels, delaying the transition to cleaner and more cost-effective sources of energy and impeding efforts to mitigate the effects of climate change.

13. The Attorney General takes the position that Enbridge has the burden of establishing that (1) there is public need for the Line 5 Project, (2) the proposed pipeline is designed and routed in a reasonable manner, (3) the construction of the pipeline will meet or exceed current safety and engineering standards, and (4) there is no feasible and prudent alternative to the Project as proposed.

14. The Attorney General reserves the right to take additional and different positions based upon future discovery and evidence in this case and/or based on how the case evolves.

III. Relief Requested

Attorney General Dana Nessel requests that the Michigan Public Service Commission:

- a. Enter this Notice of Intervention into the official record of the captioned case and treat her as a party to these proceedings for all purposes;
- b. Develop an evidentiary record and conduct proceedings pursuant to Chapter IV of the Administrative Procedures Act [MCL 24.271 *et seq.*];
- c. Deny Enbridge's application based upon the record developed; and
- d. Grant any further and additional relief the Commission may decide is reasonable and lawful.

Respectfully submitted,

Dana Nessel
Attorney General

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Dated: July 22, 2020

PROOF OF SERVICE - U-20763

The undersigned certifies that a copy of the *Attorney General's Notice of Intervention* was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 22nd day of July 2020.

Robert P. Reichel

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