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July 29, 2020

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

RE: MPSC Docket No. U-20763

Dear Ms. Felice:

Attached for filing in the above-referenced matter, please find ***Applicant Enbridge Energy, Limited Partnership's Petition For Rehearing*** and Certificate of Service of same.

Thank you.

Very truly yours,

**Fraser Trebilcock Davis & Dunlap, P.C.**

Michael S. Ashton

Michael S. Ashton
Digitally signed by Michael S. Ashton
Date: 2020.07.29 17:53:56 -04'00'

MSA/ab
Attachments
cc: All counsel of record

**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

| | | |
|---|---|---|
| **IN RE ENBRIDGE ENERGY, LIMITED PARTNERSHIP** | ) | |
| | ) | **Case No. U-20763** |
| **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** | ) | |

# APPLICANT ENBRIDGE ENERGY, LIMITED PARTNERSHIP'S PETITION FOR REHEARING

## I. INTRODUCTION

On April 17, 2020, Enbridge Energy, Limited Partnership, ("Enbridge") filed its application, supporting testimony, and exhibits requesting authority to relocate the portion of its Line 5 pipeline from the floor of the Straits of Mackinac ("Straits") to within a tunnel beneath the Straits ("Project"). In the alternative, Enbridge requested a declaratory ruling pursuant to Rule 448 (R 792.10448), that it already had the requisite regulatory authority for the Project. On April 22, 2020, the Commission issued an order establishing a public comment period on Enbridge's request for declaratory relief. After considering the comments, the Commission issued its June 30, 2020 Order denying Enbridge's request for declaratory relief and initiated a contested case proceeding on Enbridge's application requesting the authority for the Project.

Enbridge files this petition for rehearing because the Commission's June 30, 2020 Order is based on an erroneous conclusion of law: that Enbridge is ***not*** a utility. This erroneous

conclusion resulted in a misinterpretation and misapplication of Rule 447 (R 792.10447), and a faulty determination that Enbridge was required to file an application seeking approval for the Project.[1] Rule 447 applies only to the construction of new utility facilities that serve a new area, and not to this Project, which involves relocating a small portion of a fully operational pipeline along its existing route without providing service to new areas.

While the June 30, 2020 Order states that Public Act 16 of 1929, as amended, MCL 483.1 *et seq*., ("Act 16"), provides the Commission with broad authority over pipelines, no provision of Act 16 requires the filing of an application for approval of a pipeline relocation such as this Project, and no rule was promulgated pursuant to Act 16 requiring such an application. Further, the 1953 Order already provided Enbridge the authority to construct, operate, and maintain Line 5, and nothing in the 1953 Order required additional approval for the Project. For all the reasons set forth below, Enbridge's petition for rehearing should be granted.[2]

## II. STANDARD FOR GRANTING A PETITION FOR REHEARING

The standard for filing a petition for rehearing is set forth in Rule 437(1), which states:

> A petition for rehearing after a decision or order of the commission shall be filed with the commission within 30 days after service of the decision or order of the commission unless otherwise specified by statute. A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon.

[1] The Project fulfills an important state policy objective to relocate Line 5 within a tunnel, as established by the enactment of Public Act 359 of 2018, which created the multi-purpose utility tunnel for Line 5's relocation. The Court of Appeals affirmed with finality the constitutionality of Act 359 in *Enbridge Energy, L.P. v. State of Michigan*, __ Mich. App.___, [2020 WL 3106841], (June 11, 2020). The State has not sought review in the Michigan Supreme Court and the deadline for seeking such review has passed.

[2] To conserve resources and efficiently resolve this matter, Enbridge respectfully requests that the Commission rule on this petition for rehearing at the time of the final order in the contested case hearing on its application, and only in the event that the Commission denies the application.

> The petition shall be accompanied by proof of service on all other parties to the proceeding. [R 792.10437(1).]

Here, the June 30, 2020 Order makes an erroneous conclusion of law that Enbridge and other pipelines regulated by Act 16 are not utilities. (*Id.,* pp. 60 – 61.) This resulted in an improper interpretation and application of Rule 447, leading to the erroneous conclusion that Enbridge was required to obtain additional approval from the Commission for the Project.

## III. ARGUMENT

### A. THE JUNE 30, 2020 ORDER CLEARLY ERRED IN CONCLUDING ENBRIDGE AND OTHER ACT 16 PIPELINES ARE NOT UTILITIES, AND THIS ERROR RESULTED IN A MISINTERPRETATION AND MISAPPLICATION OF RULE 447 TO THE PROJECT

Based on response comments filed by the Michigan Environmental Council, the Grand Traverse Band of Ottawa and Chippewa Indians, Tip of the Mitt Watershed Council, and the National Wildlife Federation, the June 30, 2020 Order erroneously adopted the argument that Enbridge and other pipelines regulated by Act 16 are not utilities. (Response Comments p. 12; June 30 Order pp. 60 - 61.) By adopting this clearly erroneous argument, the Commission concluded that the provisions of Rule 447(2)(c), (f) and (3), which make specific references to utilities and describe mandatory subjects to be included within all Rule 447 applications, should be ignored because Enbridge was not a utility and therefore these provisions of Rule 447 were inapplicable to an application required to be filed by Enbridge. The failure to recognize Enbridge as being a utility resulted in the erroneous conclusion that Enbridge was required to file an application for the Project, because the provisions of Rule 447(2)(c), (f) and (3) when read with the rest of Rule 447 show that the rule is inapplicable to the Project.

Specifically, when read as whole it is clear that (1) entities conducting oil pipeline operations pursuant to Rule 447(1)(c) are utilities and (2) only construction projects that extend

such pipelines to serve a new area, as opposed to the mere relocation of a utility's pipeline are covered by the Rule. Accordingly, the Enbridge Project to relocate Line 5 within a tunnel is not covered by the Rule. This result follows from the text of the Rule: Rule 447(2)(c) requires a description of the "utility service **to be** furnished," while Rule 447(2)(f) requires a listing of utilities with which "**the proposed new construction or extension is likely to compete**," and Rule 447(3) allows automatic participation by those competing utilities. When these provisions are read in conjunction with Rule 447(2)(e) requiring a description of "**the proposed new construction or extension**," it becomes clear that Rule 447 applies to new construction providing new utility service to a new area, and not construction that relocates a small portion of an existing pipeline which does not impact its service area, such as the Project.

The erroneous argument by opponents to the Project that Enbridge and other Act 16 pipelines are not utilities is based on the definition of the term "utility" as used in the Commission's "Rules for Consumer Standards and Billing Practices for Electric and Natural Gas Service" (the "Billing Rules"), which are inapplicable to Act 16 pipelines. R 460.102b(m). As discussed in detail below, the definition of the term "utility" as used in the Billing Rules is intentionally designed to reference only those utilities subject to the Billing Rules; this definition does not exclude or prevent other entities from being defined as a utility for purposes unrelated to the Billing Rules. Based on Michigan statutes and the common law definition of a public utility, Enbridge and other pipelines regulated by Act 16 are utilities, notwithstanding the Billing Rules.

### 1. The Definition of "Utility" in the Billing Rules is Inapplicable

The Billing Rules were promulgated for a narrow and specific purpose: to regulate a narrow subset of utilities' (electric and natural gas utilities) billing to residential and nonresidential

customers. R 460.101. That is why the definitions used in the Billing Rules are specifically limited to these rules alone. Rule 2b(m) states:

> **As used in these rules**:
>
> …
>
> (m) "Utility" means a firm, corporation, cooperative, association, or other legal entity that is subject to the jurisdiction of the commission and that provides electric or gas service. (R 460.102b(m); emphasis added.)

The use of the phrase "**as used in these rules**" limits this narrow definition of "utility" exclusively to the Billing Rules, and the definition is explicitly not intended to have any broader applicability outside of these Rules. The definition's purpose is to define the narrow subset of utilities that are actually subject to the Billing Rules, not to define for all other purposes what entities are, or are not, a utility, as evidenced by the limiting language "[a]s used in these rules." In essence, the purpose of defining the term "utility" to mean those "utilities providing electric and gas service," in R 460.102b(m) was to create a shorthand reference - - i.e., the term "utility" - - that could be used throughout the Billing Rules in place of a more unwieldly phrase, such as "a utility that provides electric or gas service." The definition within the Billing Rules is not intended to have any broader applicability outside those rules. The June 30, 2020 Order clearly erred in relying on this definition to determine that Enbridge is not a utility.

### 2. By Statute and Common Law, Enbridge and Other Pipelines Regulated by Act 16 are Utilities

Other pertinent statutes establish the Commission's authority over pipelines as utilities. For example, The Michigan Public Service Commission Act of 1939 states that the "commission is further granted the power and jurisdiction to hear and pass upon all matters pertaining to, necessary, or incident to **the regulation of public utilities, including** electric light and power companies, whether private, corporate, or cooperative; water, telegraph, **oil, gas, and pipeline**

**companies**; motor carriers; private wastewater treatment facilities; and all public transportation and communication agencies other than railroads and railroad companies." MCL 460.6(1); emphasis added. By statute, pipelines are expressly included within a list of public utilities subjected to the Commission's jurisdiction.

The Cost of Regulating Public Utilities Act, Public Act 299 of 1972, ("Act 299") removes any doubt that pipelines regulated pursuant to Act 16 are utilities. Section 9 of Act 299 unequivocally provides that "[**a]ny public utility** over which the commission has jurisdiction solely pursuant to … **Act No. 16 of the Public Acts of 1929**, as amended, … shall pay fees as prescribed by the commission in lieu of any assessment under the provisions of this act." (MCL 111.9; emphasis added.) The statute specifically references pipelines subject to Act 16 as being public utilities.[3]

In addition to the above statutes, Enbridge and other Act 16 pipeline companies also meet the common law definition of a public utility. In *Lakehead Pipe Line Co., v. Dehn*, 340 Mich. 25, 36; 64 N.W. 2d 903 (1954), the Supreme Court held that pipelines authorized pursuant to Act 16 constituted a "public use." The owner or operator of a facility that provides this type of a "public use" is a "public utility." *Schurtz v. City of Grand Rapids*, 208 Mich. 510, 524; 175 N.W. 421 (1919). So by common law as well, Enbridge is a public utility providing a utility service.

[3] Other statutes the Commission enforces recognize pipelines as being utilities. For example, the MISS DIG Underground Damage Prevention and Safety Act describes pipelines as providing a utility service. Facilities protected by the MISS DIG statute includes "underground or submerged … **pipe** … used to … **transmit, or distribute a utility service**, including communications, data, cable television, electricity, heat, natural or manufactured gas, **oil, petroleum products**, steam, sewage, video, water, and other similar substances, including environmental contaminates or hazardous waste." MCL 460.723(o) (emphasis added). Numerous other statutes also define pipelines as utilities. For example, the Michigan Uniform Commercial Code, defines pipelines as "transmitting utilities." MCL 440.9102(aaaa)(iii). A criminal statute that protects public utility workers from assault includes in the definition of a public utility a provider of "pipeline services." MCL 750.81e. A criminal statute also makes it unlawful to impersonate a public utility worker, and includes within the definition of a public utility those entities providing "pipeline services." MCL 750.217b.

In sum, Michigan statutes and common law unequivocally define pipelines, specifically including pipelines subject to Act 16, as public utilities that provide utility service. Accordingly, the June 30, 2020 Order misinterpreted Rule 447 by concluding that Enbridge is not a utility and the provisions of Rule 447(2)(c),(f) and (3) that reference utilities did not need to be considered in determining the applicability of Rule 447 to the Project. When these provisions are considered, it is clear that Rule 447 only requires an application to be filed for new pipelines serving a new area and therefore not for the Project.

### B. WHEN READ AS WHOLE, RULE 447 IS INAPPLICABLE TO THE PROJECT

By adopting the erroneous argument that Act 16 pipelines are not utilities, the June 30, 2020 Order improperly determined that Rule 447(2)(c) and (f) and (3) could be ignored and this resulted in a misapplication of Rule 447 to the Project. This was clearly erroneous because Enbridge is a utility and, when determining the applicability of a rule, Michigan law requires the rule to be read as whole. As discussed below, when read as a whole Rule 447 does not require an application to be filed for the Project, because the rule only pertains to the construction of new facilities that serve a new area.

"Principles of statutory interpretation apply to the construction of administrative rules." *City of Romulus v. Michigan Dept. of Environmental Quality,* 254 Mich. 54, 64; 678 N.W. 2d 444 (2003), citing *Detroit Base Coalition for Human Rights of Handicapped v. Dept. of Social Services*, 435 Mich. 172, 185; 428 N.W. 2d 335 (1988). In interpreting a statute, the Supreme Court in *Ally Financial Inc. v. State Treasurer*, 502 Mich. 484, 493; 918 N.W. 2d 662 (2018) stated:

> When interpreting unambiguous statutory language, the statute must be enforced as written. No further judicial construction is required or permitted. [O]ur goal is to give effect to the Legislature's intent, focusing first on the statute's plain language. We must examine the

> statute as a whole, reading individual words and phrases in the context of the entire legislative scheme. In doing so, we consider the entire text, in view of its structure and of the physical and logical relation of its many parts. (Footnotes and quotation marks omitted.)

In determining the applicability of Rule 447 to the Project, one must consider the entire rule -- including subrule (2)(c) and (f) and subrule (3) -- as a whole and the entire text and the many parts of the rule.

Rule 447, in its entirety, provides:

> (1) An entity listed in this subrule **shall file an application** with the commission for the necessary authority to do the following:
>
> > (a) A gas or electric utility within the meaning of the provisions of 1929 PA 69, MCL 460.501 to 460.506, that **wants to construct** a plant, equipment, property, or facility for furnishing public utility service for which a certificate of public convenience and necessity is required by statute.
> >
> > (b) A natural gas pipeline company within the meaning of the provisions of 1929 PA 9, MCL 483.101 to 483.120, that **wants to construct** a plant, equipment, property, or facility for furnishing public utility service for which a certificate of public convenience and necessity is required by statute.
> >
> > (c) A corporation, association, or person conducting oil pipeline operations within the meaning of 1929 PA 16, MCL 483.1 to 483.9, that **wants to construct** facilities to transport crude oil or petroleum or any crude oil or petroleum products as a common carrier for which approval is required by statute.
>
> (2) **The application required in subrule (1)** of this rule **shall set forth**, or by attached exhibits show, all of the following information:
>
> > (a) The name and address of the applicant.
> >
> > (b) The city, village, or township affected.
> >
> > (c) The nature of **the utility service to be furnished**.

> (d) The municipality from which the appropriate franchise or consent has been obtained, if required, together with a true copy of the franchise or consent.
>
> (e) A full description of the **proposed new construction or extension**, including the manner in which it will be constructed.
>
> (f) The **names of all utilities rendering the same type of service with which the proposed new construction or extension is likely to compete**.
>
> (3) A **utility** that is classified as a respondent pursuant to R 792.10402 **may participate as a party to the application proceeding** without filing a petition to intervene. It may file an answer or other response to the application. (Emphasis added.)

Subrule (1)(a), (b), and (c) identifies the utilities that must file an application with the Commission. The triggering event in subrule (1) is when the utilities "want[] to construct" facilities for furnishing service. When subrule (1) is not read in isolation and instead read in conjunction with subrule (2) and (3) there is no ambiguity: Rule 447 applies only to construction of new facilities to provide a new service in a new area and not construction relating to maintaining, replacing, or relocating existing facilities.

First, subrule (1) cannot be read in isolation to determine its meaning, because subrule (2) specifically states that "the application required in subrule (1) of this rule shall set forth … all of the following information." Thus, subrule (2) identifies the type of construction referenced in subrule (1) and unambiguously references only "proposed new construction or extension" of facilities that serve new areas.

For example, subrule (2)(c) states that the application **shall** include "the utility service **to be** furnished." The use of the verb "to be" references service not yet provided, but to be provided

in the future.[4] The use of the verb "to be" is consistent with the conclusion that Rule 447 addresses the construction of a new pipeline or facility serving a new area and is inconsistent with an interpretation that would apply Rule 447 to construction that merely maintains, replaces or relocates a portion of an existing pipeline or electric facility that is already providing service. In other words, an application is required for future services and not for services already being provided.

Subrule (2)(e) further requires a description of the "proposed **new** construction or extension." If subrule (2)(e) is interpreted broadly to include any and all construction activity, including construction relating to maintaining, replacing, or relocating an existing pipeline or other utility facility, then this interpretation conflicts with subrule 2(c) which limits applications to services "to be furnished" in the future as opposed to services already being provided. In addition, there would be no need to include the term "new" to modify the term "construction" in subrule 2(e) if it applied to all construction, including construction related to maintaining, replacing, or relocating an existing facility.

In *People v. McGraw*, 484 Mich. 120, 126, 771 N.W. 2d 655 (2009), the Court stated that "in interpreting a statute, we avoid a construction that would render part of the statute surplusage or nugatory." To give meaning to all the words in subrule 2(e), the term "new" must limit or describe a particular type of "construction," i.e., the construction of a proposed new pipeline. This is particularly true given the juxtaposition of the phrase "new construction" with the term "extension" which clearly means the act of extending an existing pipeline or other facility to a new service area. In this context, the plain meaning of the phrase "proposed new construction or extension" does not include replacing or relocating a portion of an existing pipeline along its

[4] When "be" is used with "to" (i.e., "to be"), the phrase expresses "futurity." Webster's Third International Dictionary (Unabridged), Merriam-Webster, Inc. (1993), at p. 189.

existing route, particularly where such replacement or relocation does not result in service to a new area.

When subrule 2(c) and (e) are read together, Rule 447 is unambiguously limited to a new pipeline or extension of an existing pipeline to provide service for the first time in an area. This conclusion is inescapable when read in conjunction with subrule (2)(f) and subrule (3) of Rule 447. Subrule 2(f) requires the "names of all utilities rendering the same type of service with which the proposed new construction or extension is likely to compete." Subrule (3) then provides those utilities with the automatic right to participate in the application proceeding. These provisions make no sense if Rule 447 applies to situations like the one here, where there is no new service, no new service area, and no extension of facilities.

Read as a whole, Rule 447 requires notice to and allows automatic participation of other utilities to ensure that the utility service to be provided by the proposed new construction or extension does not unnecessarily or injuriously compete with an existing utility's service. There is no reason to allow for automatic participation if Rule 447 also includes construction relating to maintaining, replacing, or relocating an existing pipeline or other facility within an existing service area. Because Rule 447 requires an application for new construction or the extension of new facilities, the Rule does not require an application to be filed for this Project. That is because this Project involves maintaining an existing pipeline by relocating a small portion of it along its existing route. Rule 447 is inapplicable, and the June 30, 2020 Order erred in concluding that Rule 447 required Enbridge to file an application for approval of this Project.

### C. Act 16 Does not Require the Filing of an Application for Approval of the Project

Based on Section 1(2) of Act 16, the June 30, 2020 Order also concluded that the Commission has broad jurisdiction over the construction and operation of pipeline facilities,

including the right to review and "approve proposed pipelines." Order at p. 59. Section 1(2), in relevant part provides:

> A person exercising or claiming the right to carry or transport crude oil or petroleum, or any of the products thereof . . . by or through pipe line or lines . . . or exercising or claiming the right to engage in the business of piping, transporting, or storing crude oil or petroleum, or any of the products thereof . . . does not have or possess the right to conduct or engage in the business or operations, in whole or in part, **or have or possess the right to locate, maintain, or operate the necessary pipe lines, fixtures, and equipment belonging to . . . except as authorized by and subject to this act**. MCL 483.1(2); emphasis added.

The June 30, 2020 Order's reliance on this section of Act 16 is misplaced because nothing in Act 16 requires an application be filed seeking approval of a pipeline. Quite the opposite, Section 6 of Act 16 only requires that a pipeline operator file "an explicit authorized acceptance of the provisions of this act" and "a plat." MCL 483.6. In this instance, the specific statutory provisions in Section 6 govern over any general provisions in Section 1. *DeFrain v. State Farm Auto. Ins. Co.*, 491 Mich. 359, 365; 817 N.W. 2d 504 (2012). Nothing in Act 16 itself requires Enbridge to file an application or seek prior approval from the Commission for the Project.

The June 30, 2020 Order also recognizes that Act 16 provides the Commission with rulemaking authority pursuant to Section 8 of Act 16. MCL 483.8. Order, p. 59. Though it is true that the Commission promulgated Rule 447, that rule is inapplicable to the Project for the reasons discussed above. As a result, nothing in Act 16 requires Enbridge to file an application for prior approval of the Project, and the Commission has not promulgated any such rule.

### D. THE 1953 ORDER PROVIDES AUTHORITY TO CONSTRUCT AND MAINTAIN LINE 5 AND DOES NOT REQUIRE ADDITIONAL APPROVAL FOR THE PROJECT

In the 1953 Opinion and Order, the Commission granted approval "to construct, operate *and maintain* [Line 5] as a common carrier" within Michigan. (Case D-3903-53.1, p. 9; emphasis

added.) The Project falls squarely within the scope of this previously granted authority. Here, Enbridge is not seeking to construct, operate, or maintain any pipeline other than Line 5.[5] Enbridge is merely relocating approximately four miles of the 645-mile pipeline within a tunnel which is located along the pipeline's existing route and beneath the lakebed of the Straits so that it may permanently deactivate the Dual Pipelines at the behest of the entity that granted the easement for this segment of the line -- the State of Michigan. The Project will fulfill an important state policy objective to protect the Great Lakes as established by the passage of Act 359 creating the utility tunnel and the Third Agreement entered between Enbridge and the State of Michigan. Exhibit A-1.[6]

The June 30, 2020 Order ignored this plain language in the 1953 Order, concluding that the Project "differs significantly from what was approved in the 1953 Order and the 1953 easement and its amendment" and that the 1953 Order does not provide Enbridge the authority for the Project. June 30, 2020 Order at p. 58. The rationale boils down to the fact that the Dual Pipelines currently crossing the Straits, which are two, 20-inch outside diameter pipes, will be replaced by a single, 30-inch outside diameter pipe located within a tunnel below the Straits.

As an initial matter, the 1953 Order in not dependent on the 1953 Easement or its amendment. That is because the 1953 Order was issued on March 31, 1953, *before* the 1953 Easement was even executed on April 23, 1953. (Exhibit A-2, p 14.) So the 1953 Easement cannot

[5] There is no factual dispute that Enbridge is the successor to Lakehead Pipe Line Company, Inc, (the Applicant in the 1953 Order). This Commission approved the transfer of Line 5 from Lakehead Pipe Line Company, Inc to Lakehead Pipe Line Company, Limited Partnership, which then changed its name to Enbridge Energy, Limited Partnership (the Applicant in this case). *See*, November 8, 1991 Opinion Approving Issuance of Securities, Case U-9980 and Attachment 1 to Enbridge's Response Comments. Any other conclusion is a factual error.

[6] Act 359, which created the multi-purpose utility tunnel for Line 5's relocation, overwhelmingly passed with bipartisan support. The House of Representative approved by a 74 to 34 vote (House Journal 78, p. 2536) and the Senate approved by a 25 to 12 vote (Senate Journal 77, p. 2118). Act 359's constitutionality has been affirmed in *Enbridge Energy, L.P. v. State of Michigan*, __ Mich. App.___, [2020 WL 3106841], (June 11, 2020). This court decision is not subject to any further appeals.

be a basis for the assertion that there is a significant difference between the Project and Line 5 as approved in the 1953 Order.

The 1953 Order provides that Line 5's route will cross "under said Straits" with no specific mention of the yet-to-be-executed 1953 Easement or requirement that the crossing only be placed within the 1953 Easement. (1953 Order, p 2.) Given the actual language in the 1953 Order, the relocation of Line 5's Straits crossing within the tunnel is entirely consistent with and does not differ an iota from the route the 1953 Order approved. And even if the Commission took the 1953 Easement into account, the easement in which the tunnel will be located encompasses the length and width of the 1953 Easement description for the westerly Dual Pipeline that crosses the Straits. (See also, Figure No.1 in the Application, p. 7.)

Relocating a small portion of Line 5 at the behest of an easement grantor - - here the State of Michigan - - to alleviate a perceived risk to the Great Lakes, does not cause the Project to differ from or exceed the 1953 Order's scope of approval. Rather, the relocation is consistent with that approval. The State of Michigan, through its Conservation Commission, granted the 1953 Easement and the State of Michigan now seeks to modify it, so that the Dual Pipelines may be removed from the floor of the Straits to offer greater protection to the Great Lakes. In exchange, the State of Michigan, through its Department of Natural Resources, granted the Tunnel Easement (Exhibit A-6) located beneath the 1953 Easement to house the replacement pipe segment for Line 5. Both easements were issued after the 1953 Order both traverse the same area of the Straits and both are within the scope of the 1953 Order's scope of approval. Accordingly, no additional approval should be required.

The June 30, 2020 Order also states the Project significantly differs from the 1953 Order because the 1953 Order references that the Straits crossing would consist of two, 20-inch diameter

pipes rather than a 30-inch diameter pipe. But the 1953 Order actually approved both: the 1953 Order states that it "consist[s] 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)." *Id*. So the 1953 Order makes clear that the Commission-approved Line 5 as a 30-inch diameter pipeline -- but also recognized for technical reasons the Straits crossing would consist of two 20-inch diameter pipes. What the 1953 Order does not do is prevent the two, 20-inch pipelines from being replaced by a single, 30-inch pipeline within a tunnel, given that the technical basis for separating the line into two separate 20-inch lines disappears with construction of the tunnel. Line 5 was approved as a 30-inch pipeline and the Project is consistent with Line 5 being constructed, operated, and maintained as a 30-inch pipeline.

In any event, the 1953 Order provided broad authority to construct, operate, and *maintain* Line 5. Nothing in the 1953 Order requires Enbridge to seek additional approval from the Commission. Because construction of the tunnel and replacement of the two, 20-inch lines with a single, 30-inch line is consistent with Line 5's maintenance as the State of Michigan has specifically requested, the 1953 Order provides Enbridge the authority for the Project.

## IV. RELIEF REQUESTED

WHEREFORE, Enbridge respectfully requests that this Honorable Commission grant its petition for rehearing pursuant to Rule 437 (R 792.104370) and issue a declaratory ruling pursuant to Section 63 of the Administrative Procedures Act of 1969, MCL 24.263, and Rule 448 (R 792.10448), concluding that Enbridge already has obtained the authority it needs from the Commission for the Project.

Respectfully submitted,

Michael S. Ashton
Digitally signed by Michael S. Ashton
Date: 2020.07.29 17:54:18 -04'00'

Dated: July 29, 2020

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**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

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| **IN RE ENBRIDGE ENERGY, LIMITED PARTNERSHIP**<br><br>**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** |

**CERTIFICATE OF SERVICE**

Angela R. Babbitt hereby certifies that on the 29th day of July, 2020, she served ***Applicant Enbridge Energy, Limited Partnership's Petition For Rehearing*** and Certificate of Service of same in the above docket on the persons identified on the attached service list by electronic mail.

Angela R. Babbitt

Angela R. Babbitt

Digitally signed by Angela R. Babbitt
Date: 2020.07.29 17:54:35 -04'00'

**Service List for U-20763**

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