124 West Allegan Street, Suite 1000
Lansing, Michigan 48933
T (517) 482-5800 F (517) 482-0887
www.fraserlawfirm.com

Michael S. Ashton
mashton@fraserlawfirm.com
(517) 377-0875

August 11, 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 Limited Objections to the Petitions to Intervene Filed by The Bay Mills Indian Community, The Grand Traverse Band Of Ottawa And Chippewa Indians, Little Traverse Bay Bands Of Odawa Indians, and Notttawaseppi Huron Band Of The Pottawatomi.***

Thank you.

Very truly yours,

Fraser Trebilcock Davis & Dunlap, P.C.

Michael S. Ashton

Michael S. Ashton
Digitally signed by Michael S. Ashton
Date: 2020.08.11 13:21:46 -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 LIMITED OBJECTIONS TO THE PETITIONS TO INTERVENE FILED BY THE BAY MILLS INDIAN COMMUNITY, THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS, LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS, AND NOTTTAWASEPPI HURON BAND OF THE POTTAWATOMI

I. INTRODUCTION

On April 17, 2020, Enbridge Energy, Limited Partnership ("Enbridge") filed its application, supporting testimony, and exhibits seeking to relocate the portion of its Line 5 pipeline from the floor of the Straits of Mackinac ("Straits") within a tunnel beneath the Straits ("Project").[1]

[1] Pursuant to Public Act 359 of 2018 ("Act 359"), the Mackinac Straits Corridor Authority ("MSCA") is the state agency vested with the exclusive authority "to acquire, construct, operate, maintain, improve, repair, and manage [the] tunnel," and which will own the tunnel after construction. (MCL 254.324a(1), MCL 254.324d(1), and the Tunnel Agreement -- Exhibit A-5.) The tunnel will be constructed pursuant to Act 359, which defines the "utility tunnel" as being "a tunnel joining and connecting the Upper and Lower Peninsulas of this state at the Straits of Mackinac for the purpose of accommodating utility infrastructure, including, but not limited to, pipelines, electric transmission lines, facilities for the transmission of data and telecommunications…." MCL 254.324(e). The environmental permitting for the tunnel is not a matter within the authority of this Commission, but rather is being addressed by the Department of Environment, Great Lakes and Energy ("EGLE"), as well as by the US Army Corps of Engineers ("USACE").

Enbridge's application does not seek authority to construct the tunnel, but instead to relocate an approximately 4-mile portion of Line 5 that crosses the Straits (sometimes referred to as the "replacement pipe segment") within the tunnel. This application results from the Michigan Legislature's enactment of Act 359 which allows the Line 5 Strait's crossing to be relocated within a tunnel in order to fulfill an important State policy objective: to "essentially eliminate the risk of adverse impacts that may result from a potential release from Line 5 at the Straits." (The Second Agreement, Exhibit A-10, p. 3.)[2]

The Bay Mills Indian Community ("Bay Mills"), the Grand Traverse Band of Ottawa and Chippewa Indians ("Grand Traverse Band"), Little Traverse Bay Bands of Odawa Indians ("Little Traverse Band"), and Notttawaseppi Huron Band of the Pottawatomi ("Huron Band") (collectively, referred to as the "Tribes") filed petitions to intervene. The Tribes' petitions fail to demonstrate that they are entitled to intervene by right based on statute, because they are unable to show that granting the relief requested by Enbridge's application causes them an injury in fact or that their alleged harm falls within the "zone of interests" to be protected by Public Act 16 of 1929 ("Act 16").[3] But the Tribes may be entitled to permissive intervention since the Commission's June 30, 2020 Order recognized that Enbridge's application "raises novel questions and important issues of policy." *Id.* at pp. 70–71. Given the Tribes' status as federally recognized Indian Tribes and sovereign nations, Enbridge believes they "bring a unique perspective to the

[2] Act 359, which creates the multi-purpose utility tunnel for Line 5's relocation, was overwhelmingly passed with bipartisan support. The House of Representatives 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). 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.

[3] *See In the matter of the application of ZFS Ithaca, LLC,* November 8, 2018 Order, Case No. U-20198, which recognized the well-established two-prong test for standing adopted by the Commission from *Association of Data Processing Service, Inc. v. Camp*, 397 US 150; 90 S Ct 827; 25 L Ed 2d 184 (1970) and applied to utility matters in *Drake v Detroit Edison Company*, 453 F Supp 1123 (WD Mich., 1978).

issues raised" that may not be represented by Commission Staff or the Attorney General to justify permissive intervention.

Enbridge does not object to the grant of permissive intervention to the Tribes. However, if the Tribes' petitions to intervene are granted, then their participation should be limited pursuant to Rule 412(1), being R 792.10412(1), to the issues that are relevant to the application. As has been previously set forth by the Commission, the relevant issues in an Act 16 proceeding are whether (1) there is a public need for the Project, (2) the proposed pipeline [here, the replacement pipe segment] is designed and routed in a reasonable manner, and (3) the construction of the pipeline [here, the replacement pipe segment] 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.

The Tribes state that they will contest other issues outside the scope of this application. For example, Bay Mills' petition seeks to raise issues regarding "climate change," the "operation of the current Line 5," and the "siting and construction of the tunnel." (Bay Mills at p. 3, ¶ 12; *see also*, Little Traverse Band at p. 3, ¶¶ 8 - 9; Huron Band at p. 2, ¶ 6.) Similarly, Grand Traverse Band's petition seeks to raise issues regarding "the continued operation of Line 5," "delays [in] the transition to cleaner and more cost-effective low-carbon sources of energy," and "the effects of climate change." (Grand Traverse Band at p. 4, ¶ 12.) None of these other issues are within the scope of Enbridge's application or the Commission's jurisdiction.

If Enbridge's application is granted, then the Line 5 Straits crossing will be relocated within a tunnel (assuming the separate permits for constructing the tunnel are approved) which will fulfill an important State policy objective by alleviating a perceived risk to the Great Lakes. If this application is denied, then the Line 5 Straits crossing will continue to operate in its current location;

its future operation in the event the replacement pipe segment at the Straits is not authorized is not at issue here. Therefore, issues such as "climate change," the "operation of the current Line 5," and the "siting and construction of the tunnel" are not part of Enbridge's application and are not within the Commission's jurisdiction. Even though Enbridge does not object to the Tribes being granted permissive intervention, their participation should be limited to the germane issues before the Commission.

II. LEGAL ANALYSIS

A. THE TRIBES ARE NOT ENTITLED AS A MATTER OF RIGHT TO INTERVENE

The Commission has established a two-pronged test to determine if a person is entitled as a matter of right to intervene in a Commission proceeding. In *In re Michigan Consolidated Gas Co.*, Case No. U-9138, Opinion and Order, November 10, 1988, p. 5, the Commission stated:

> Before a party can either institute or intervene in a legal proceeding, it must have standing to do so. Mere interest in the outcome of the proceeding is insufficient; the party must satisfy the two-prong test established by the U.S. Supreme Court in *Association of Data Processing Service, Inc v Camp*, 397 US 150; 90 S Ct 827, 25 L Ed 2d 184 (1970) and applied to utility matters in *Drake v Detroit Edison Company*, 453 F Supp 1123 (W.D. Mich. 1978). This test requires the party in question to show: *1) it suffered an "injury in fact;" and 2) that the interests allegedly damaged are within the "zone of interests" to be protected or regulated by the statute or constitutional guarantee in question*. *Drake*, supra, p. 1127. [Emphasis added.]

To have a right to intervene, a person must meet both prongs of this test. Here, the Tribes fail to meet either one.

1. THE TRIBES HAVE NOT SHOWN AN INJURY IN FACT

An "injury in fact" requires demonstration of an invasion of a legally protected interest which is both (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. *Alltel Communications, Inc. v. Michigan Bell Tel Co.*, Case No. U-15166, Order,

May 22, 2007 at p. 22. Without establishing an actual and concrete injury, the Commission has held that a party's mere interest alone in a proceeding is not enough to make the party eligible for intervention. *In re Consumers Power Co.*, MPSC Case No. U-9433, Opinion and Order, February 22, 1990 at pp. 4-5. The Tribes' alleged harms fail to meet the injury in fact test to establish standing because their allegations of harm are unrelated to the relief requested in Enbridge's application.

Three of the Tribes assert a treaty based and legally protected interest to fish within portions of the Great Lakes as well as usufructuary fishing, hunting, trapping, and gathering rights inland. (Grand Traverse Band at ¶ 3; Bay Mills at ¶ 5; and Little Traverse Band at p.2, ¶ 5.) In an effort to assert a "concrete and particularized" harm which is "actual or imminent" caused by Enbridge's application seeking to relocate the Line 5 Straits crossing within a tunnel, the Tribes assert that they are harmed by the actual operation of Line 5, or that the relocation of Line 5 within the tunnel will allow continued operation of Line 5 for a longer period of time, or that Line 5 contributes to climate change. These assertions do not and cannot constitute "concrete and particularized" harms which are "actual or imminent" arising from Enbridge's application to relocate Line 5. Whether the Commission grants or denies the application, Line 5 will continue to operate - - either in a tunnel or on the floor of the Straits. Such operation will also continue to comply with the safety standards established by the federal Pipeline and Hazardous Materials Safety Administration ("PHMSA"). The unsupported assertion that somehow relocating Line 5 within a tunnel increases its longevity is complete speculation and conjecture with zero foundation in fact. As a result, the Tribes fail to demonstrate a "concrete and particularized" harm which is "actual or imminent" caused by granting Enbridge's application.

The Tribes also say that activities involving the construction of the tunnel may harm the environment, and thus their treaty fishing rights. Again, this alleged harm is unrelated to this pipeline relocation application and ignores that the Commission lacks jurisdiction over the construction or operation of the tunnel. The authority over the tunnel is vested in the MSCA pursuant to Act 359. The tunnel will be constructed in accordance with the environmental permits to be obtained from USACE and EGLE. The Tribes will have a full and complete opportunity to participate in the process before those agencies to address any potential impact relating to the tunnel construction on their treaty rights. In fact, the Tribes are already actively participating before the USACE.[4] These issues and alleged harms are unrelated to Enbridge's application and those issues will be addressed by other agencies.

2. THE ASSERTED HARMS DO NOT FALL WITHIN THE ZONE OF INTERESTS OF ACT 16

The Tribes' alleged injury also does not fall within the zone of interests to be protected by Act 16. The Tribes rely on two provisions in Act 16, MCL 483.3 and MCL 483.2b. Neither support intervention because the alleged harm does not fall within the zone of interests to be protected by those statutes.

MCL 483.3 broadly states that "the commission is granted the power to control, investigate, and regulate a person" operating a pipeline. While this statute outlines the Commission's authority over pipelines, it does not extend any authority to any other persons, including the Tribes, to control, investigate, and regulate pipelines or to intervene in pipeline proceedings before the Commission. The Tribes cite no legal authority for the proposition that the Legislature's general grant of regulatory authority to the Commission extends to the Tribes a right to intervene in a pipeline relocation proceeding before the Commission. If this were the case, then all persons

[4] The Tribes, through the Chippewa Ottawa Resource Authority, are actively participating in those proceedings.

would fall within the zone of interests of every statute granting the Commission regulatory authority and everyone would have the right to intervene in every proceeding before the Commission.

Similarly, MCL 483.2b does not provide a right to intervene. MCL 483.2b states: "[a] pipeline company shall make a good-faith effort to minimize the physical impact and economic damage that result[s] from the construction and repair of a pipeline." While this provision places a duty on a pipeline company to act in good faith during construction, it does not provide a third person a right to intervene in an application proceeding such as this. Enbridge's application describes in detail the proposed construction activity it will undertake to locate the replacement pipe segment within the tunnel. The Tribes do not object to the proposed construction activity relating to the replacement pipe segment itself. Instead, the Tribes' assertions relate to the construction of the tunnel, the continued operation of Line 5, and climate change. Yet, MCL 483.2b only imposes a good-faith duty regarding the construction or repair of pipelines, and does not impose a duty relating to the continued operation of a pipeline, managing climate change, or a tunnel that is subject to another agency's authority. These asserted injuries of the Tribes do not fall within the zone of interests to be protected by this provision of Act 16.

Next, the Tribes argue that the Michigan Environmental Protection Act ("MEPA") entitles them to intervene as a matter of right. Yet, the plain language of MEPA only allows for permissive intervention and only when the conduct involved in the proceeding has, or is likely to have, the effect of polluting natural resources. MCL 324.1705(1) states:

> If administrative, licensing, or other proceedings and judicial review of such proceedings are available by law, the agency or the court **may** permit the attorney general or any other person to intervene as a party on the filing of a pleading asserting that the proceeding or action for judicial review involves conduct that **has, or is likely to have**, the effect of polluting, impairing, or destroying the air, water,

> or other natural resources or the public trust in these resources. [emphasis added.]

The statute on its face states that the agency "may" allow intervention and does not entitle anyone to intervene as a matter of right. The Commission's past practice with respect to Rule 447 applications has been to deny intervention based on MEPA.[5] E.g., *In re Encana Oil & Gas (USA) Inc.*, April 16, 2013 Order, Case Nos. U-17195 and U-17196; see also *Buggs v. Public Service Commission*, Case Nos. 315058, 315064, 2015 WL 159795 at p. 8 (Mich. App. Jan. 13, 2015) (where the court stated that to satisfy MEPA, the Commission is not required to grant interventions to third persons, or even conduct a contested case hearing on the environmental impact of a project).

Moreover, to qualify for permissive intervention under MEPA, one must file a pleading asserting that the proceeding "involves conduct that has, or is likely to have, the effect of polluting, impairing, or destroying the air, water, or other natural resources or the public trust in these resources." Here, the Tribes have not asserted that the replacement pipe segment being located within the tunnel will have such an effect. As discussed above, the alleged harms are all unrelated to the relief requested in Enbridge's application.

[5] A number of the Tribes cite the Commission's February 2020 Order in *In the matter of the application of DTE Electric Company for approval of its Integrated Resource Plan pursuant to MCL 460.6t and for other relief* ("*In re DTE*"), Case No. U-20471, for the proposition that the Commission has allowed intervention pursuant to MEPA in other proceedings and should do so in this proceeding. As an initial matter, the Petition to Intervene of the Environmental Law & Policy Center (April 19, 2019) and Natural Resources Defense Council's Petition to Intervene (April 3, 2019) filed *In re DTE* sought intervention under MCL 460.6s(4) and 6t(7)--**not MEPA**. In allowing intervenors to raise MEPA-related issues later in that proceeding, the Commission stressed "that Section 6t contains significant environmental mandates which apply to IRP applicants," and specifically distinguished IRP cases from other proceedings before the Commission. *Id.* at p.43. Unlike IRP cases, Act 16 and Rule 477 applications do not contain those significant environmental mandates.

B. ENBRIDGE DOES NOT OBJECT TO PERMISSIVE INTERVENTION

The Commission occasionally grants permissive intervention where a person cannot satisfy the two-pronged test for standing as of right if public policy otherwise warrants the person's involvement. In its June 30, 2020 Order in this case, after stating that the application raises novel issues, the Commission reiterated its standard for permissive intervention: "[i]n a proceeding that 'raises novel questions and important issues of policy,' the Commission may permit intervention when [a petitioner] will 'bring a unique perspective to the issues raised by the case.'" *Id.* at pp. 70 –71, citing the June 5, 1996 Order in Case No. U-11057, pp. 2-3. The Commission has made clear that the "unique perspective" offered by a proposed permissive intervenor must relate to "the issues raised by the case." *In re Masotech Forming Technologies*, Case No. U-11057, Order, June 5, 1996 at p. 3.

Here, unlike the environmental petitioners, the Tribes do present a unique perspective in light of their status as federally recognized Indian Tribes. Further, as sovereign nations, their perspective may not be adequately represented by others, such as the Commission Staff or the Attorney General. As a result, Enbridge does not object to their request for permissive intervention. Nonetheless, their permissive intervention must be limited and cannot expand the case's scope. As in past cases, the "unique perspective" offered by a permissive intervenor must relate to "the issues raised by the case." *In re Masotech Forming Technologies*, Case No. U-11057, Order, June 5, 1996 at p. 3.

C. IF PERMISSIVE INTERVENTION IS GRANTED, THEN IT MUST BE LIMITED

As stated above, the role of other sovereigns can bring a unique view point, however, as this proceeding is pursuant to the rules and overview of another sovereign, the State of Michigan, the Tribes' roles should be limited to the scope of the Commission's review. Rule 412(1) provides

that an administrative law judge "shall grant or deny, in whole or in part, a petition for leave to intervene or, **if appropriate, may authorize limited participation**." R 792.10412(1); emphasis added. To the extent permissive intervention is granted, the Tribes' intervention must be limited to the issue raised by Enbridge's application, which is whether the Line 5 crossing at the Straits,--specifically the replacement pipe segment—should be relocated within a tunnel. In past Act 16 applications, the Commission stated that the relevant issues are 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. The Tribes' participation should be limited to those issues with respect to the replacement pipe segment.

While the Tribes state that they will contest these issues, they also say that they will take additional undisclosed positions that best serve the other issues that they have raised in their petitions. (Bay Mills at pp. 7-8, ¶ 21; Grand Traverse Band at pp. 6-7, ¶ 23; Huron Band at p. 5 ¶ 15; Little Traverse Band at pp. 4 -5, ¶ ¶12 -13.) For example, the Bay Mills' petition raises issues such as "climate change," the "operation of the current Line 5," and the "siting and construction of the tunnel." (Petition at p. 3, ¶ 12.) Similarly, the Grand Traverse Band's petition seeks to raise issues regarding "the continued operation of Line 5," "delays [in] the transition to cleaner and more cost-effective low-carbon sources of energy," and "the effects of climate change." (Petition at p. 4, ¶ 12.)

As previously discussed, none of these other issues raised in the Tribes' petitions are within this proceeding's scope. If Enbridge's application is granted, then the Line 5 crossing at the Straits will be relocated within a tunnel (assuming the separate permits for constructing the tunnel are

also approved) fulfilling an important state policy objective to alleviate a perceived risk to the Great Lakes. If this application is denied, then Line 5 at the Straits will continue to operate in its current location. While Enbridge does not object to the Tribes being granted permissive intervention, their participation should be limited to the relevant issues before the Commission and the Tribes should not be allowed to raise issues relating to the construction of the tunnel, the continued operation of Line 5, the current safety of Line 5, or climate change.

The Commission has no statutory authority over the tunnel's construction, and the tunnel construction is not part of Enbridge's application. The authority over the tunnel was unequivocally vested in the MSCA pursuant to Act 359, which grants the MSCA the authority "to acquire, construct, operate, maintain, improve, repair, and manage [the] tunnel." MCL 254.324a(1), MCL 254.324d(1). After the tunnel's construction, it will be owned by the MSCA. (Tunnel Agreement, Exhibit A-5.) To the extent the Tribes wish to address the environmental impacts of the tunnel construction, they may, as noted above, do so in the permit proceedings before EGLE and USACE.[6] These issues are outside the scope of the Commission's jurisdiction and this proceeding.[7]

---

[6] The Tribes, through the Chippewa Ottawa Resource Authority, are actively participating in these proceedings and there is no need to duplicate this administrative review, and it is inappropriate to do so where the Commission lacks jurisdiction over the tunnel.

[7] Some petitioners may attempt to argue that Act 359 requires Commission approval of the tunnel itself based on Section 14d(4)(g) of Act 359, which provides that the tunnel agreement "does not exempt any entity that constructs or uses the utility tunnel from the obligation to obtain any required governmental permits or approvals for the construction or use of the utility tunnel." MCL 254.324d(4)(g). On its face, however, this provision does not vest this Commission with any additional authority, other than what already exists, and nothing in Act 16 provides the Commission with authority over the tunnel. In an effort to extend Act 16 authority over the tunnel, some petitioners may also argue that the tunnel should be treated as a fixture or equipment appurtenant to Line 5. The tunnel, however, is not a fixture or equipment appurtenant to Line 5. The tunnel is a standalone structure, distinct from the pipeline and other utility lines that may be placed within it, and is to be used to house a variety of utility infrastructure. MCL 254.324(e). This statutory definition of the utility tunnel is wholly inconsistent with any argument that the tunnel is somehow a fixture or equipment appurtenant to Line 5. In addition, MSCA has the authority to "acquire" and "operate" the tunnel, to charge utilities fees for the tunnel's use, and to also lease the tunnel to utilities. MCL 254.324a; MCL 254.324d(1). As such, the characterization of it as a mere fixture is inconsistent with the tunnel as a structure whose ownership is distinct from the replacement pipe segment owned by Enbridge. This argument also ignores the plain meaning of the terms "fixture" or "appurtenance." A "fixture" is a thing that, though originally a movable

In their petitions, the Tribes also wish to raise issues regarding the safety of the current operation of Line 5. However, any concerns with the safety of Line 5's current operations are not issues within the scope of this Commission proceeding, which concerns only the relocation of a pipeline crossing. To the extent the Tribes have issues with the safety of the current operation of Line 5, they are free to address those issues with the federal agency assigned responsibility over the safety of interstate pipelines, PHMSA.

In addition, while the Tribes assert potential injury to treaty rights by the continued operation of Line 5, their petitions failed to specify any affirmative relief regarding this continued operation. Rule 410(2), in relevant part mandates: "If affirmative relief is sought, the petition for leave to intervene **shall specify that relief**." (Emphasis added.) On this basis alone, no affirmative relief may be sought with regard to the continued operation of Line 5.[8]

III. RELIEF REQUESTED

WHEREFORE, Enbridge Energy, Limited Partnership, respectfully requests that:

A. The Tribes' request to intervene as a matter of right be denied;

B. If the Tribes are granted permissive intervention, then their intervention be limited to the relevant issues in this proceeding which are: (1) is there a public

---

good, is, by reason of its annexation to land, regarded as a part of the land. *Wood Hydraulic Hoist & Body Co. v. Norton*, 269 Mich. 341, 257 N.W. 836 (1934). Here the "tunnel" is not "a movable good," but instead, an underground structure with its very existence dependent upon it being located underground, and is incapable of being a movable good. Similarly, the tunnel is not equipment appurtenant to Line 5. The term "equipment" means "goods other than inventory, farm products, or consumer goods." MCL 440.9102(gg). The term "goods means all things that are movable." MCL 440.9102(qq).

[8] More importantly, there is no statutory basis in Act 16 and none has been cited to rescind or revoke a prior approval for a pipeline. Even if such a provision existed, which it does not, the Tribes would lack standing to assert it. See *Michigan Bell Telephone Co., v Public Service Commission*, 214 Mich. App. 1, 5-6; 542 NW.2d 279 (1996) (where the court held that permissive standing is not permitted in a contest case where a party seeks to impose a penalty or revoke an existing right). Finally, the procedural safeguards required by the Administrative Procedures Act would require notice of the statutory and factual basis for the revocation along with an informal hearing before a contested case could even begin to revoke a prior approval of a pipeline. See MCL 24.292(1); MCL 24.205(a) and *Rogers v. Michigan State Board of Cosmetology*, 68 Mich. App. 751; 244 N.W.2d 20 (1976).

need for the Project, (2) is the replacement pipe segment designed and routed in a reasonable manner, and (3) will the construction of the replacement pipe segment meet or exceed current safety and engineering standards; and

C. The Tribes are not allowed to raise issues regarding the construction of the tunnel, the continued operation of Line 5, the safety of Line 5's current operations, and climate change.

Respectfully submitted,

Michael S. Ashton

Digitally signed by Michael S. Ashton
Date: 2020.08.11 13:22:02 -04'00'

Dated: August 11, 2020

Michael S. Ashton (P40474)
Shaina R. Reed (P74740)
Fraser Trebilcock Davis & Dunlap, P.C.
124 West Allegan, Suite 1000
Lansing, Michigan 48933
517-482-5800
mashton@fraserlawfirm.com
sreed@fraserlawfirm.com