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STATE OF MICHIGAN
IN THE SUPREME COURT

In re APPLICATION OF ENBRIDGE ENERGY TO REPLACE AND RELOCATE LINE 5.

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS, BAY MILLS INDIAN COMMUNITY, GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS, NOTTAWASEPPI HURON BAND OF THE POTAWATOMI, and ENVIRONMENTAL LAW & POLICY CENTER and MICHIGAN CLIMATE ACTION NETWORK,

Appellants,

v

MPSC, MACKINAC STRAITS CORRIDOR AUTHORITY, MICHIGAN PROPANE GAS ASSOCIATION, NATIONAL PROPANE GAS ASSOCIATION, and MICHIGAN LABORERS' DISTRICT COUNCIL,

Appellees,

and

ENBRIDGE ENERGY LIMITED PARTNERSHIP,

Petitioner-Appellee.

SC: 168335-9
COA: 369156, 369159, 369161, 369162, 369165
PSC: 00-020763

FOR LOVE OF WATER,

Appellant,

v

MPSC, MACKINAC STRAITS CORRIDOR AUTHORITY, MICHIGAN PROPANE GAS ASSOCIATION, NATIONAL PROPANE GAS ASSOCIATION, and MICHIGAN LABORERS' DISTRICT COUNCIL,

Appellees,

and

SC: 168346
COA: 369163
PSC: 00-020763

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ENBRIDGE ENERGY LIMITED
PARTNERSHIP,

Petitioner-Appellee.

MICHIGAN LABORERS' DISTRICT COUNCIL'S
APPELLEE BRIEF TO SUPREME COURT

CERTIFICATE OF SERVICE

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MLDC APPELLEE BRIEF

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

COUNTERSTATEMENT OF QUESTIONS PRESENTED AND JURISDICTION iii

INTRODUCTION 1

ARGUMENT 2

I. THE MLDC 2

II. SUMMARY OF MLDC'S SUPPORT FOR ENBRIDGE'S APPLICATION AND DENIAL OF APPELLANTS' LEAVES TO APPEAL 3

A. Michigan Jobs and Talent Retention 3

B. Michigan Commerce and Environmental Safety 5

III. THERE IS NO BASIS FOR OVERTURNING THE COURT OF APPEALS 5

A. Review Properly Limited to the Line 5 Replacement 5

B. Court of Appeals Properly Found Common Law Public Trust Doctrine Inapplicable to Statutory MPSC Analysis 6

C. Court of Appeals Properly Declined to Engage in Fact Finding 6

CONCLUSION 8

CERTIFICATE OF SERVICE i

WORD COUNT CERTIFICATE i

RECEIVED by MSC 12/22/2025 1:07:51 PM

TABLE OF AUTHORITIES

CASES

Amalgamated Transit Union, Local 1564, AFL-CIO v SEMTA, 437 Mich 441 (1991) 7

Gogebic Community College Michigan Educ Support Pers Ass'n v Gogebic Community College, 246 Mich App 342 (2001) 7

In re Reliability Plans of Elec Utils for 2017-2021, 505 Mich 97 (2020) 6

Org of Sch Adm'rs & Sup'rs AFSA, AFL-CIO v Detroit Bd of Educ, 229 Mich App 54 (1998) 7

W Mich Env't Action Council, Inc v Nat Res Comm, 405 Mich 741 (1979) 7

STATUTES

Crude Oil and Petroleum Act 16 of 1929, MCL 483.1, *et al.* 5

Nat Res & Env't Prot Act, Mich Env Prot Act (MEPA), MCL 324.1701, *et al.* 6, 7, 8

Public Employment Relations Act (PERA), MCL 423.216 7

CONSTITUTIONAL PROVISION

Mich Const 1963, Art VI, §28 7

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COUNTERSTATEMENT OF QUESTIONS PRESENTED AND JURISDICTION

MLDC concurs with Enbridge's Counterstatements of Questions Presented and Jurisdiction.

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INTRODUCTION

Michigan Laborers' District Council ("MLDC") intervened in this case before the Michigan Public Service Commission ("MPSC") in support of Enbridge Energy, Limited Partnership's ("Enbridge") Application ("Enbridge Application") to relocate the Line 5 replacement segment within the tunnel ("Tunnel Project").

The MLDC represents seven (7) local laborer unions, and approximately 13,000 construction workers who reside in Michigan. These laborers *currently* provide substantial labor on Line 5 and take pride in helping to ensure the safe, reliable provision of energy to our state.

MLDC intervened in the MPSC case, and responds now in the current proceedings, to protect the interest of its union members whose employment opportunities will be directly affected by the outcome. MLDC's interests are based on the employment, economic, employee safety, and environmental safety enhancements expected from the construction and maintenance of the proposed tunnel. In short, the MLDC supports the continuous and safe operations of Line 5.

The Michigan Court of Appeals ("Court of Appeals") upheld the MPSC decision, which was consistent with state policies, including consideration of environmental protection enhancements and public need. There are no grounds to warrant overturning the Court of Appeals' decision, nor the MPSC's decision, in this matter.

So, MLDC hereby concurs with Enbridge's Appellee Brief and requests that the Court uphold the Court of Appeals Decision and deny Appellants' Appeals to this Court.

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ARGUMENT

Line 5 currently provides direct and indirect employment to MLDC members in Michigan and throughout the region. Enbridge's Tunnel Project will relocate a replacement segment of the pipeline crossing the Straits of Mackinac within a tunnel. Enbridge's Application impacts whether and when the tunnel is constructed.

The MPSC correctly approved Enbridge's Application. The MPSC properly considered Enbridge's evidentiary presentations, including in the supplemental record, which make clear that housing the Line 5 replacement segment in a tunnel makes a safe crossing even safer with secondary containment that will prevent any product from reaching the Straits of Mackinac. And, the MPSC properly considered the public need of the Tunnel Project.

The Court of Appeals properly affirmed MPSC's approval.

I. THE MLDC

MLDC and its Michigan local union affiliates are part of the Laborers' International Union of North America, AFL-CIO (LIUNA), which represents more than a half-million construction trades workers and others throughout the United States and Canada.

Michigan Laborers'-represented workers are covered by collective bargaining agreements with employer associations and individual employers. The employers perform construction and other work throughout Michigan. The agreements govern wages, hours, and working conditions, provide for training and skills enhancement, and provide for retirement and healthcare benefits for Michigan workers and their families.

MLDC, with employers in labor-management trusts, sponsors four (4) training centers to ensure that Laborers'-represented workers have the skills needed by Michigan employers to provide state-of-the-art -- and *safe* -- construction and other work to meet the needs of Michigan business, industry, and government and, more broadly, the needs of Michigan residents.

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Michigan MLDC members -- and their families -- have strong interests in supporting employment for Michigan residents, in the enhancement of the Michigan economy and the economic success of those who live, work, and do business in Michigan, and in the well-being of the Great Lakes and the Michigan environment valued by all who live and work in Michigan, and all who appreciate the beauty of the state and its unmatched recreational opportunities.

II. SUMMARY OF MLDC'S SUPPORT FOR ENBRIDGE'S APPLICATION AND DENIAL OF APPELLANTS' LEAVES TO APPEAL

A. Michigan Jobs and Talent Retention

Michigan Laborers'-represented workers currently perform approximately 10,000 to 15,000 work hours *each month* on Line 5 in Michigan.[1] Michigan Laborers take pride in this work and its support of energy infrastructure in the State. And, the work hours and jobs are important to the Laborers' livelihoods.

The Tunnel Project is expected to generate nearly two million work hours for roughly two hundred Michigan workers -- for a multi-year period. Those nearly two million work hours include job locations in the Upper Peninsula and northern portion of the Lower Peninsula where reasonably-compensated jobs -- especially jobs like this which include fringe benefits such as healthcare and retirement benefits -- are desperately needed.

Further, after the Tunnel Project is completed, Line 5, including the replaced section, will *continue* to provide hundreds of Michigan residents with jobs necessary to maintain the tunnel.

These construction and maintenance jobs will add millions of dollars to Michigan workers' wages, pensions, and healthcare benefits and to the Michigan economy.

[1] Indeed, Michigan Laborers'-represented workers perform one to two *million* work hours per year on pipelines.

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Given Michigan's seasonality, longstanding and sustainable jobs are a unique job opportunity for laborers and the construction industry alike. Line 5 and the Tunnel Project permit tenured laborers to maintain and build their skill set, while also providing on-the-job training for new-to-the-trade laborers. Job continuity also creates successful working relationships between employers and their workers, leading to promotional opportunities and known skilled work forces for future employment.

The Tunnel Project will also provide the MLDC with the ability to recruit new talent -- *i.e.*, apprentices -- as the allure of long-term, reasonably compensated jobs with benefits are critical to promoting the Michigan construction industry.

The jobs, MLDC anticipates, will have a synergistic effect, positively enhancing others not directly involved in the Tunnel Project -- Michigan businesses which will provide materials and services and employ workers who will provide goods and services to the construction and maintenance workers and their families, and contribute to the tax base. In addition, MLDC anticipates that the project will positively impact Michigan and regional and local governments, that will benefit from enhanced taxes, broadened employment, pension benefits and healthcare earned by private-sector labor, and an expanded trained and experienced workforce that will be available for future government road and infrastructure construction and maintenance.

Conversely, if the Tunnel Project is halted, nearly two million work hours to construct the tunnel may also be lost, much to the detriment of hard-working Michigan construction trade workers. So, too, will post-construction, maintenance work hours be lost. And, importantly, this is a unique job opportunity where there is no evidence that such work hours will be created elsewhere. Additional remands will again further delay this important work.

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B. Michigan Commerce and Environmental Safety

Line 5 transports energy products through the Straits of Mackinac, destined for refineries in Michigan, Ohio, Pennsylvania, Quebec, and Ontario. The refined energy products are in substantial part transported from the refineries back to Michigan locations, where they are used to meet the energy needs of Michigan businesses and residents. Line 5 promotes Michigan commerce and the well-being of Michigan residents. This will be maintained into the future. Line 5 will be protected by the proposed tunnel.

Regarding environmental safety, MLDC understands that Line 5 has current vulnerability, including being susceptible to potential damage from anchors dropped by ships using the Straits. The Tunnel Project, MLDC understands, will reduce this vulnerability to nearly zero.

III. THERE IS NO BASIS FOR OVERTURNING THE COURT OF APPEALS

Enbridge's Application met all legal requirements and standards pursuant to Act 16. Indeed -- as to the approval criteria that the construction of the replacement pipe segment will meet or exceed safety and engineering standards -- the use of the highly skilled and well-trained MLDC laborers will help ensure that construction meets all safety standards.

A. Review Properly Limited to the Line 5 Replacement

Enbridge's Application has a limited purpose -- to relocate a replacement segment of Enbridge's Line 5 in a utility tunnel. As the ALJ correctly found, the MPSC correctly confirmed, and the Court of Appeals upheld, the scope of this case has never wavered -- *i.e.*, that the scope is limited to the Line 5 replacement segment, not the entirety of Line 5. Remand Ruling, pp. 19, 20; ALJ's October 23, 2020 Ruling on Motion in *Limine*; MPSC April 21, 2022 Order; COA Op. pp. 23-34.

As the Court of Appeals noted, if Appellants' arguments are accepted -- and the entirety of Line 5 is reviewed and at risk due to an application for a limited replacement to *lessen*

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environmental risk -- the effect would be the *opposite* of that which Appellants purport to advocate. Indeed, such a ruling would disincentivize operators from making any safety or environmental improvements and make the entire pipeline *more* dangerous. MLDC opposes such a result, as this would make the current work performed by laborers more dangerous, and would reduce work hours as it would certainly lessen the amount of repair work.

B. Court of Appeals Properly Found Common Law Public Trust Doctrine Inapplicable to Statutory MPSC Analysis

The Court granted leave over questions regarding the public trust doctrine.

First, as the Court of Appeals correctly found, the common law public doctrine is beyond the statutory authority of the MPSC. Court of Appeals Op. p. 22; *see In re Reliability Plans of Elec Utils for 2017-2021*, 505 Mich 97, 119 (2020).

Second, and in any event, MPSC's review under MEPA §324.1705(2) complies with the public trust doctrine. Section 1705(2) provides:

> In administrative, licensing, or other proceedings, and in any judicial review of such a proceeding, the alleged pollution, impairment, or destruction of the air, water, or other natural resources, or the public trust in these resources, shall be determined, and conduct shall not be authorized or approved that has or is likely to have such an effect if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.

As part of its review, the MPSC reviewed proposed alternatives. See Court of Appeals Op. pp. 12-17, summarizing the MPSC review of alternatives.

C. Court of Appeals Properly Declined to Engage in Fact Finding

The Court of Appeals applied a deferential standard of review, properly refraining from acting as a fact finder.

The Court here has granted leave over the question of whether the Court of Appeals erred when it applied "a deferential standard of review rather than determining de novo whether the proposed conduct will pollute, impair, or destroy the air, water, or state's other natural resources

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or the public trust in these resources under" MEPA, in light of *W Mich Env't Action Council, Inc v Nat Res Comm*, 405 Mich 741, 752-755 (1979). (*In re App of Enbridge Energy*, MSC Case No. 168335-9, September 19, 2025 Order).

The question of whether the project will harm the State's natural resources is a question of fact. It is well established that appellate courts -- rather than trial courts -- are not traditionally tasked with de novo fact finding.

Similarly, the Michigan Employment Relations Commission (MERC) is an independent agency charged with administering various laws governing labor-management relations in the State of Michigan, and handles matters such as public-sector unfair labor practices. Its decisions can be appealed directly to the Court of Appeals, rather than to a trial court. MERC's factual findings are upheld by the Court of Appeals so long as they are supported by *competent, material, and substantial evidence* on the whole record. *Org of Sch Adm'rs & Sup'rs AFSA, AFL-CIO v Detroit Bd of Educ*, 229 Mich App 54, 64 (1998), citing Public Employment Relations Act (PERA), MCL 423.216(e); Mich Const 1963, Art VI, §28; *Amalgamated Transit Union, Local 1564, AFL-CIO v SEMTA*, 437 Mich 441, 450 (1991).

As "our [Michigan] Supreme Court has ruled" -- "[r]eview of factual findings of the [MERC] commission must be undertaken with sensitivity, and due **deference must be accorded to administrative expertise**. Reviewing courts should not invade the exclusive fact-finding province of administrative agencies by displacing an agency's choice between two reasonably differing views of the evidence." *Gogebic Cmty Coll Mich Educ Support Pers Ass'n v Gogebic Cmty College*, 246 Mich App 342, 348-349 (2001) (emphasis added), citing *Amalgamated*, 437 Mich at 450, 473.

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Here, too, where Section 1705 does not require de novo review by the *Court of Appeals* for appeals of agency determinations -- a separate question from review by a *trial court* in Section 1701 lawsuits -- this Court should not expand the Court of Appeals' review.

CONCLUSION

For the reasons above, and based on its unique perspective to these proceedings, the MLDC concurs with the Enbridge's Appellee Brief and requests that the Court deny Appellants' Appeal and uphold the MPSC's and Court of Appeals decisions.

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December 22, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2025, I caused the foregoing paper to be electronically filed with the Clerk of the Court using the MiFile TrueFiling system which will send notification of such filing to all counsel of record in the MiFile system.

s/Megan B. Boelstler
Megan B. Boelstler

WORD COUNT CERTIFICATE

I certify that the foregoing paper contains 2,044 words as counted by Microsoft Word for Microsoft 365.

s/Megan B. Boelstler
Megan B. Boelstler