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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, ENVIRONMENTAL LAW & POLICY CENTER and MICHIGAN CLIMATE ACTION NETWORK,

Appellant,

and

FOR LOVE OF WATER,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION, MACKINAC STRAITS CORRIDOR AUTHORITY, MICHIGAN PROPANE GAS ASSOCIATION, NATIONAL PROPANE GAS ASSOCIATION, and MICHIGAN LABORERS' ADISTRICT COUNCIL,

Appellees,

and

ENBRIDGE ENERGY LIMITED PARTNERSHIP,

Petitioner-Appellee.

Supreme Court Nos. 168335, 168336, 168337, 168338, 168339, and 168346,

Court of Appeals Nos. 369156, consolidated with Nos. 369157, 369159, 369161, 369162, 369163, and 369165, 369231

MPSC Case No. U-20763

Hon. Christopher S. Saunders

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STATEMENT OF APPELLATE JURISDICTION

The Court of Appeals issued its opinion on the consolidated appeals, Docket Nos. 369156, 369157, 369159, 369161, 369162, 369163, 369165, and 369231, on February 19, 2025.

On April 2, 2025, Appellant For Love of Water ("FLOW") filed a timely application for leave to appeal in this Court. Appellants Bay Mills Indian Community ("Bay Mills"), Little Traverse Bay Bands of Odawa Indians ("LTBB"), Grand Traverse Band of Ottawa and Chippewa Indians ("GTB"), Nottawaseppi Huron Band of the Potawatomi ("NHBP") (collectively, "Tribal Nations"), Environmental Law and Policy Center ("ELPC"), and Michigan Climate Action Network ("MiCAN") (all together collectively referred to as "Joint Appellants") also filed a timely application for leave to appeal on April 2, 2025.

On September 19, 2025, this Court granted FLOW's and Joint Appellants' applications for leave to appeal. Accordingly, this Court has jurisdiction to hear these appeals under MCR 7.303(B)(1) and MCL 600.215.

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STATEMENT OF QUESTIONS PRESENTED

1. Whether the Court of Appeals erred by applying 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 or the public trust in these resources under MCL 324.1705(2) of the Michigan Environmental Protection Act (MEPA), MCL 324.1701 *et seq*., in accordance with *West Mich Environmental Action Council, Inc v Natural Resources Commission*, 405 Mich 741, 752-755; 275 NW2d 538 (1979).

The Court of Appeals answer:	No.
Appellants' answer:	Yes.
Appellees' answer:	No.

2. Whether the Court of Appeals erred by affirming the Michigan Public Service Commission's limitation on the scope of the evidence to be reviewed regarding its determinations under MCL 324.1705(2) of MEPA and its decision to exclude evidence of the history and risk of oil spills along the entire length of Line 5 in those determinations.

The Court of Appeals answer:	No.
Appellants' answer:	Yes.
Appellees' answer:	No.

3. Whether in enacting MCL 324.1705(2) of the Michigan Environmental Protection Act, MCL 324.1701 *et seq*., the Legislature required the Michigan Public Service Commission (MPSC or Commission) to comply with the common-law public trust doctrine, and if not, the common-law public trust doctrine nonetheless requires such compliance.

The Court of Appeals answer:	No.
Appellants' answer:	Yes.
Appellees' answer:	No.

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RELEVANT STATUTES

MCL 324.1705 (Michigan Environmental Protection Act):

> (1) 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.
>
> (2) 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.
>
> (3) The doctrines of collateral estoppel and res judicata may be applied by the court to prevent multiplicity of suits.

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INTRODUCTION

Line 5 is a 645-mile interstate pipeline that starts in Superior, Wisconsin, crosses through Michigan's Upper and Lower Peninsulas, and ends in Ontario, Canada. Currently, where Line 5 crosses the Straits of Mackinac, the pipeline splits into two parallel segments, known as the "Dual Pipelines," which cross the Straits along the lakebed before reuniting on the opposite side of the Straits. This case arises out of Enbridge Energy, Limited Partnership's application to the Michigan Public Service Commission under MCL 483.1 *et seq*. ("Act 16") to replace that 4-mile-long, Dual Pipelines segment with a new, single pipeline to be located in a tunnel underneath the Straits (the "Replacement Project").

The Michigan Propane Gas Association ("MPGA") is a Michigan non-profit corporation that has 205 members, and that represents all facets of the propane industry in the State of Michigan. The National Propane Gas Association ("NPGA") is the national trade association of the U.S. propane industry with a membership of about 2,400 companies, including affiliated state and regional associations—such as MPGA— representing members in all states. The Propane Associations intervened in this case because of the importance to their members of the critical propane supply that Line 5 provides.

Although Appellants ostensibly intervened in the Commission's proceeding to oppose the Replacement Project, most of Appellants' arguments were directed at challenging the continued operation of Line 5 pipeline as a whole—even though the necessary approvals for Line 5's operation were obtained decades ago. Recognizing Appellants' goal to shutter Line 5 entirely, the Commission repeatedly refused to entertain Appellants' attempts to expand the scope of the proceeding to consider all of Line 5. Ultimately, after several years of review, multiple appeals, and thousands of pages of briefing, testimony, and public comments regarding Enbridge's application, the Commission granted Enbridge's application specific to the Replacement Project.

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Appellants appealed the Commission's approval and continued to attempt to expand the appropriately narrow scope of the Commission's review under Act 16 and the Michigan Environmental Protection Act ("MEPA"), including challenging the public need for Line 5 itself in the Court of Appeals. In a detailed opinion, the Court of Appeals affirmed the Commission's final order and concluded that the Commission's MEPA analysis was supported by law and evidence and that there was no basis for reversal or remand.

This Court should affirm the Court of Appeal's decision. Neither MEPA's plain language or purpose nor this Court's precedent required the Court of Appeals to make a *de novo* determination on whether the Replacement Project would pollute, impair, or destroy the air, water, or other natural resources or the public trust in these resources. And here, the Commission concluded the construction of the Replacement Project would cause some impairment of natural resources, so any deference given by the Court of Appeals would not change the outcome. Both the Commission and the Court of Appeals analyzed the second part of Section 1705 and concluded that there was not a feasible and prudent alternative to the Replacement Project.

The Court of Appeals also properly affirmed the Commission's limitation on the scope of the evidence to be reviewed regarding its determinations under MCL 324.1705(2) of MEPA. The Commission's decision on the motion *in limine* was consistent with the plain language of Section 1705, the Michigan Court Rules, and the Commission's precedent and therefore cannot be an abuse of discretion. Importantly, Appellants' arguments concerning the motion *in limine* were primarily based on separate litigation that Appellants asserted made the future of Line 5 "dubious." But the District Court for the Western District of Michigan's recent grant of summary disposition to Enbridge in that litigation makes the basis of Joint Appellants' argument moot.

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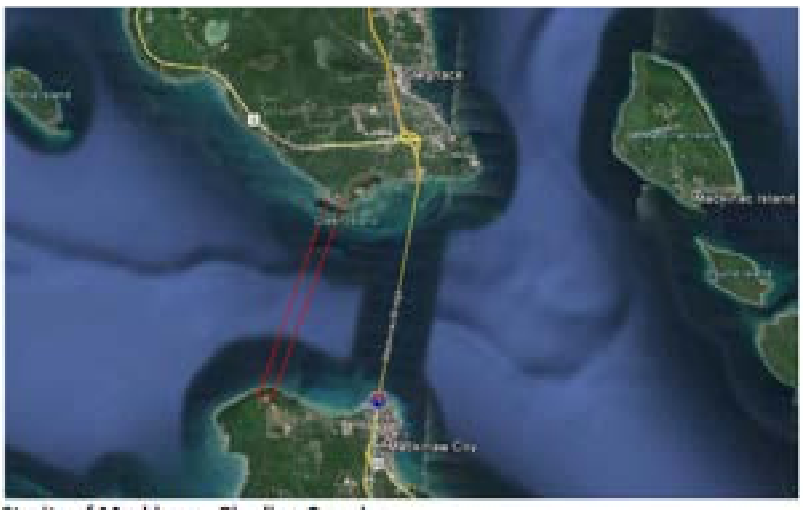
Finally, the Court of Appeals properly held that the public trust in natural resources is considered by way of an overall MEPA review. FLOW's own arguments, and the Commission's numerous references to the public trust arguments in its final order, support this conclusion. Any additional common-law public trust analysis related to the conveyance of the 1953 and 2018 Easements was already determined, and the Commission lacked statutory authority to undertake an independent public trust analysis.

STATEMENT OF FACTS

As noted, this case concerns an application filed by Enbridge in 2020 requesting that the Commission grant Enbridge the authority to replace a four-mile segment of the Line 5 pipeline that crosses the Straits of Mackinac in the Dual Pipelines (two, 20-inch-diameter pipes at the bottom of the lakebed) with a single, 30-inch-diameter pipe, which will be located within a concrete-lined tunnel beneath the lakebed. (MPSC Docket No. 713, 4/21/21 Order at 1, 5.) The segment at issue is depicted in the image below:



Straits of Mackinac – Pipeline Crossing

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The story does not begin in 2020, however. Rather, the approval and operation of Line 5 has spanned decades, and the efforts to relocate the Dual Pipelines began long before Enbridge filed its Application in April of 2020.

Line 5 construction and use

On March 31, 1953, the Commission granted approval "to construct, operate and maintain [Line 5] as a common carrier." See *In re Application of Lakehead Pipe Line Co, Inc*, opinion and order of the Public Service Commission entered March 31, 1953, Case No. D-3903-53.1 at 9 ("1953 Order"). Shortly thereafter, the Michigan Supreme Court upheld that approval and held that the construction and operation of Line 5 was "for a public use benefiting the people of the State of Michigan." *Lakehead Pipe Line Co v Dehn*, 340 Mich 25, 37-42; 64 NW2d 903 (1954).

The Line 5 pipeline was constructed by Lakehead Pipe Line Company in 1953.[1] (MPSC Docket No. 713, 4/21/21 Order at 4.) Today, Line 5 spans 645 miles beginning in Superior, Wisconsin, and ending in Ontario, Canada. (*Id.*)



[1] In 1991, Lakehead transferred Line 5 to Lakehead Pipe Line Company Limited Partnership, which changed its name to Enbridge Energy, Limited Partnership in 2002. (MPSC Docket No. 713, 4/21/21 Order at 4.)

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Line 5 provides transportation for critical energy services in Michigan and the region. The primary end products that are shipped on Line 5 are: (1) propane for home heating and cooking and for transportation and crop drying;[2] (2) butane, which is primarily used as a motor gasoline blending component, but also as a commercial and industrial fuel source; and (3) crude oil that is primarily used as the feedstock for refinery operations which produce a wide range of petroleum end products such as gasoline, diesel, jet fuel, and propane. (MPSC Docket No. 1454, 12/1/23 Order 81 (citing 12 Tr 1780).)

Propane is of particular importance to the state of Michigan. Also known as liquefied petroleum gas (LPG) or propane autogas, propane is a clean-burning alternative fuel, that, if spilled or released from a vehicle, presents no threat to soil, surface water, or groundwater.[3] While around 5% of U.S. households heat with propane, in Michigan, it is estimated that more than 8% of households are heated with propane, and with some counties topping 50% in the northern Lower Peninsula and the Upper Peninsula.[4]

More than 9,700 Michigan farms use propane and 632,000 residential properties are served by propane.[5] In 2022, Michigan consumers used approximately 531 million gallons of

[2] Propane is also used by the chemical industry as a raw material for making plastics and other compounds. Alternative Fuels Data Center, U.S. Dep't of Energy, *Propane Fuel Basics*, available at https://tinyurl.com/sndv85mm (accessed Aug 27, 2024).

[3] *Id.*

[4] Michigan Public Service Commission, *Winter Energy Appraisal: Winter Outlook 2023-2024*, Nov 8, 2023, p. 7, available at https://tinyurl.com/yc7b67ja (accessed Aug 27, 2024).

[5] Department of Environment, Great Lakes, and Energy, *Upper Peninsula Energy Task Force Committee Recommendations: Part I, Propane Supply*, April 17, 2020, p. 48. See, https://tinyurl.com/2eaknd48 (accessed Aug 27, 20204) [U.P. Energy Task Force Report].

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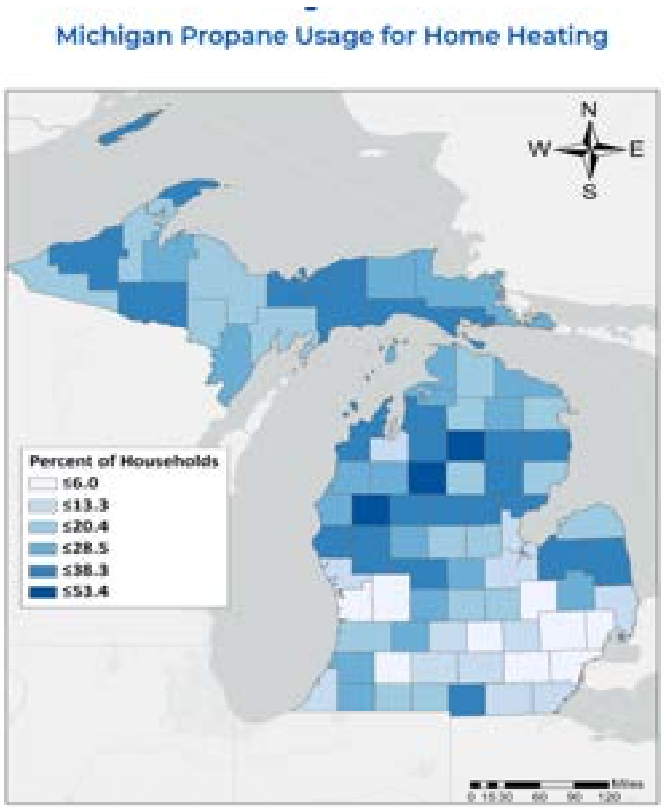
propane, making Michigan the United States' second largest propane-using state.[6] According to the federal Energy Information Administration, Michigan uses more propane in the residential sector than any other state in the country.[7] According to U.S. Census Bureau data, over 320,000 Michigan households use bottled, tanked, or LP (liquified propane) gas (propane) as their primary heating source for space heating, water heating, cooking, and other applications. (MPSC Docket No. 1454, 12/1/23 Order 81.)[8]



[6] Propane Education & Research Council, *Annual Retail Propane Sales Report: U.S. odorized propane sales by state and end-use sector*, (2022), p. 20, available at https://tinyurl.com/uvnh4dzz (accessed Aug 27, 2024).

[7] Michigan Public Service Commission, *Propane and Petroleum*, available at https://tinyurl.com/4ykanmmu (accessed Aug 27, 2024).

[8] See also Michigan Public Service Commission, *Michigan Statewide Energy Assessment*, September 11, 2019, pp. 121, 131–132, available at https://tinyurl.com/3c9takdw (accessed Aug 27, 2024).

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Another significant use for propane in Michigan is for the drying of harvested corn crops.[9] When corn crops are planted late in the spring, or when the fall is especially wet, demand for propane from the agriculture sector may rise due to the increased need to dry down their crop for it to be stored without high risk of spoilage.[10]

Line 5 transports 486,000 barrels—or 20,400,000 gallons—per day, of crude oil and NGLs. (MPSC Docket No. 1454, 12/1/23 Order 81.) Line 5 provides 42.9% of the propane supply for Michigan's Lower Peninsula and 87.6% of the propane supply for Michigan's U.P. (*Id.*) If the propane output from Enbridge's Superior, Wisconsin, fractionator utilized in Michigan is included in the calculation, the U.P. estimate increases to 93.8%. (*Id.*)[11]

The absence of Line 5 and its vital propane transportation infrastructure would produce severe consequences for the state. It is not feasible for the majority of customers who purchase Line 5 propane to switch to natural gas for home heating and other fuel needs. Indeed, testimony in Commission proceedings indicated that propane is commonly used in rural areas of the state where natural gas infrastructure is not present, nor economical to build out given the population density. (*Id.*) Moreover, any upgrade required for propane appliances to switch to other fuel sources (i.e., furnace, stove/oven, dryer, water heater) would likely be cost prohibitive for most consumers. (*Id.*) At an approximate cost of $8,000 per household, it would cost over $1.1 billion dollars to shift 45% of Michigan's 327,000 propane households to an alternative. (*Id.* at 83.) This transition would likely take a considerable amount of time to accomplish due to supply chain

[9] See note 11, *supra* at 3.

[10] *Id.*

[11] Mr. Morese's testimony referenced by the Commission here is found at MPSC Docket No. 1070, 1/24/22 Hr'g Tr Vol. 12, 1781. His testimony on this fact references Exhibit 62 from the U.P. Energy Task Force Report at p. 65 (accessed Aug 23, 2024).

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considerations, technical workforce availability, and financial requirements, making this infeasible over the short term. (*Id.*)

Given that it would be improbable or impossible to switch from propane to other fuel sources, alternative modes of transportation such as rail and truck would be necessary to transport propane. (*Id.* at 82.) However, the greenhouse gas (GHG) emissions associated with transporting petroleum products via rail or truck are substantially more than the GHG emissions related to shipping the same amount of petroleum products on Line 5. (*Id.* at 83.) This would also result in higher costs, and some households may respond to an increase in propane prices by reducing somewhat the amount of propane they consume and paying more for the propane they continue to purchase. (*Id.* at 142.) It is estimated that if customers continued to use propane but at a lower volume, it would cost each household an additional $55 to $209 per year. (*Id.*)

Michigan's propane needs are not expected to decrease in the foreseeable future. On the contrary, propane households in the Upper Peninsula have been increasing by about 2.6 percent per year, and in Michigan as a whole, have been increasing by more than one percent per year over the last five years. (MPSC Docket No. 1036, 1/18/22 Hr'g Tr Vol 8, 916 (M. Sloan Rebuttal Test 16).) Line 5 is critical for the safe and reliable distribution of propane throughout Michigan. The loss of a safe and reliable pipeline would mean jeopardizing the ability to timely and affordably deliver the propane products that many Michigan residents rely on.

The State seeks alternatives for the existing Line 5 crossing

In 2015, then-Governor Snyder issued an executive order creating the Michigan Pipeline Safety Advisory Board ("MPSAB"). EO 2015-12. The following year, the State retained Dynamic Risk Assessment Systems, Inc. to perform an independent analysis of risks and alternatives for the existing Line 5 Straits crossing. (MPSC Docket No. 1079, 2/18/22 Enbridge

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Br 4.) That report was submitted to the State in October 2017, and included various alternatives, including constructing new pipelines, using alternative transportation modes, replacing the crossing with a pipeline within a tunnel, maintaining the existing crossing, and eliminating the Straits crossing. (*Id*.)

Approximately one month later, the State and Enbridge entered into the first of a series of agreements regarding the Dual Pipelines. (*Id.* at 5.) The First Agreement recognized that the "continued operations of Line 5 through the State of Michigan serve important public needs." (*Id.*) The First Agreement required Enbridge to consider alternatives to replacing the Dual Pipelines within the Straits. (*Id.*) Enbridge submitted a Report to the State in June 2018 which concluded that only two of the three alternatives were feasible: placing a new pipe with a tunnel or installing a new pipe by the open cut method which would include a secondary containment. (*Id.*)

Enbridge and the State then entered into the Second Agreement in October 2018. (*Id.*) The Second Agreement again recognized that "the continued operation of Line 5 through the State of Michigan serves important public needs." (*Id*.) The Second Agreement also recognized that the replacement of the Dual Pipelines could essentially eliminate any risk of adverse impacts that may result from a potential release from Line 5 at the Straits. (*Id.*) To this end, the Agreement required both parties to begin negotiations toward the creation of a utility tunnel to house the Line 5 pipeline as well as other utilities, and further provided that Enbridge would permanently deactivate the Dual Pipelines once the replacement pipe was operational within the utility tunnel. (*Id.*)

On December 12, 2018, the Michigan Legislature enacted Public Act 359, which called for the creation of a utility tunnel "joining and connecting the Upper and Lower Peninsulas" at

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the Straits of Mackinac to accommodate utility infrastructure, including, but not limited to, pipelines. MCL 254.314(e). The Act further created the Michigan Straits Corridor Authority (MSCA) and delegated to the MSCA the authority to "acquire, construct, operate, maintain, improve, repair, and manage a utility tunnel," and to "enter into contracts or agreements" for these purposes. MCL 254.314a(1).

On December 19, 2018, the MSCA and Enbridge entered into the Tunnel Agreement, which required Enbridge to construct the utility tunnel at its expense, and required the MSCA to acquire an easement from the Michigan Department of Natural Resources. (MPSC Docket No. 1079, 2/18/22 Enbridge Br 7.) Under the Tunnel Agreement, the MSCA would assign certain rights under the easement to authorize Enbridge to enter and use public property to construct the tunnel, and the MSCA would accept ownership of the tunnel after construction, issuing Enbridge a lease to operate and maintain the replacement pipe within the tunnel. (*Id.*)

On the same day, Enbridge entered into the Third Agreement with the State, which reiterated that the replacement pipeline segment was expected to eliminate the risk of a potential release from Line 5 and that Enbridge would permanently deactivate the Dual Pipelines once the replacement pipe became operational. (*Id.*)

The following year, the Michigan Court of Claims held that Act 359 is constitutional, and confirmed the validity and enforceability of the agreements between Enbridge and the State of Michigan relating to the relocation of a segment Line 5 within the tunnel. *Enbridge Energy, LP v Michigan,* No. 19-000090-MZ, 2019 WL 6036699 (Mich Ct Cl Oct 31, 2019). That decision was affirmed by the Court of Appeals on June 11, 2020 in *Enbridge Energy, LP v State*, 332 Mich App 540; 957 NW2d 53 (2020).

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Enbridge files applications for environmental permits to construct the tunnel

Around the same time, Enbridge filed applications with the Michigan Department of Environment, Great Lakes, and Energy (EGLE) and the United States Army Corps of Engineers (USACE) to obtain the necessary environmental permits necessary to construct the tunnel. (MPSC Docket No. 1079, 2/18/22 Enbridge Br 8.) EGLE issued an "Authorization to Discharge under the National Pollutant Discharge Elimination System" (NPDES) permit and a Water Resources Permit. (*Id.*) In doing so, EGLE noted that the construction activities were not anticipated to adversely affect fish, wildlife, or habitat, or the ability to hunt, fish or gather in the Straits. (*Id.*) EGLE also commissioned a study to assess whether cultural resources located at the bottomlands of the Straits would be impacted and concluded that there would be no "probable effects." (*Id.* at 9.)

Enbridge files an application for authority to implement the Replacement Project under Act 16

On April 17, 2020, Enbridge filed an application under Public Act 16 of 1929 and the Commission's Rules of Practice and Procedure, Mich Admin Code R 792.10447, requesting that the Commission grant Enbridge the authority to conduct the Replacement Project. (MPSC Docket No. 1454, 12/1/23 Commission Order at 1.) The purpose of the Replacement Project, and Enbridge's application, is to secure Michigan's energy future in the safest manner possible. The Dual Pipelines have occasionally been struck by anchors of passing vessels and subjected to the wear and tear that comes with 70 years of operation and exposure to the elements. (Notice of Revocation & Termination of Easement 5-7, Jt Appellants App 693-695.) In an assessment of the operating risks to the Dual Pipelines, the dominant threat, representing more than 75% of the all-threat failure probability, is that of an anchor hooking caused by inadvertent deployment of anchors from ships traveling through the Straits. (MPSC Docket No. 1454, 12/1/23 Order 293

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(citing Dynamic Risk Report 28).) Secondary threats include internal and external corrosion, selective seam corrosion, stress corrosion cracking, construction defects, and manufacturing defects. (MPSC Docket No. 1454, 12/1/23 Order 68.) Though these threats are remote (*Id.* at 296 (citing Dynamic Risk Report 123)), an oil spill in the Straits could cause short- and long-term harm to the habitat and natural resources. (Jt Appellants Br 42; see also MPSC Docket 1454, 12/1/23 Order 69 (noting that the worst-case scenario with the highest economic impact of a spill from the dual pipelines would be one in which oil spread westward from the Straits along the shore of Lake Michigan, with anticipated damages of around $1.37 billion in total).)[12]

The Replacement Project can essentially eliminate the risk of adverse impacts that may result from a potential release from Line 5 in the Straits. (MPSC Docket 1454, 12/1/23 Order 160 (citing Second Agreement 4).) Indeed, with the Replacement Project, the risk of a release from the tunnel would be "negligible, and un-quantifiably low." (*Id.* at 178, (citing Dynamic Risk Report 3-60).) Without the Replacement Project, Enbridge is currently mitigating the risk of anchor strikes by patrolling the Straits and monitoring vessel traffic, and visually inspecting the exterior of the dual pipelines for damage. (*Id.* at 71.) If damage occurred to the Dual Pipelines, Enbridge would need to complete repairs using divers and vessels. (*Id.* at 72.) With the Replacement Project, the possibility of an anchor strike is eliminated and, in the unlikely case of a release, the tunnel acts as a secondary containment feature. (*Id.* at 161.) The Replacement Project also provides the ability for direct examination of the pipe segment and enhanced leak monitoring. (*Id.* at 310.)

[12] Citing Mich Tech Univ, *Independent Risk Analysis for the Straits Pipelines*, Sept 15, 2018, pp. 166-169, 176, 181-185, available at https://tinyurl.com/3ydw9ff4 (Accessed Aug 27, 2024).

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Enbridge files a motion *in limine* to clarify the scope of the proceeding

After the matter was set by the Commission for a contested proceeding, various parties, including Appellants and the Propane Associations, sought to intervene. (*Id.* at 2-3.) On September 2, 2020, Enbridge filed a motion *in limine* to limit the scope of the proceeding to only those considerations under Act 16 applications: whether (1) there is a public need to replace the existing Line 5 crossing of the Straits with a pipe segment located in a utility tunnel beneath the Straits; (2) the replacement pipe segment is designed and routed in a reasonable manner; and (3) the replacement pipe segment meets or exceeds current safety and engineering standards. (MPSC Docket No. 0296, 9/2/20 Enbridge Mot in Limine 5.) Enbridge argued that issues related to the continued operation of Line 5, including matters related to the public need for Line 5 and the environmental effects of its continued operation, were outside the scope of the proceeding. (*Id.*) Enbridge highlighted that it was merely requesting permission to replace a short segment of the already operational Line 5 consisting of 20-inch-diameter dual pipelines with a 30-inch single pipeline and to locate this segment into a utility tunnel underneath the lakebed. (*Id.* at 4.) Enbridge argued that if the Commission denied the request, Line 5 would continue to operate and exist, and the tunnel could still be built under Act 359 of 2018. (*Id.* at 4-5.) Accordingly, Enbridge also argued that the construction of the utility tunnel, and its environmental impacts, were also outside of the proceeding. (*Id.* at 6-8.) On September 23, 2020, the Propane Associations filed a response in support Enbridge's motion *in limine*. (MPSC Docket No. 332, Propane Associations Br.)

On October 23, 2020, the Administrative Law Judge ("ALJ Mack") issued a ruling granting Enbridge's September 2 motion *in limine* in part and denying it in part. (MPSC Docket No. 0396, 10/23/20 Ruling.) The ALJ denied Enbridge's request to exclude consideration of the utility tunnel from the proceedings, finding that while this case did not entail the approval of the

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utility tunnel itself, its construction and housing of the pipeline required the Commission to consider the design, construction and operational features of the tunnel. (*Id.* at 9.) However, the ALJ granted Enbridge's motion to exclude consideration of the continued operation of Line 5 in its entirety, including the public need for Line 5. (*Id.* at 16.) In so doing, ALJ Mack explained that the scope of this case is "necessarily dictated by two factors[:]" (1) the activity proposed in the Application, the replacement of a 4-mile segment of Line 5, and (2) the Commission's jurisdiction over that proposal under Act 16, administrative rules, and MEPA. (*Id*. at 14.) ALJ Mack also considered the analysis the Commission would conduct under MEPA, and explained that though the Commission would consider the construction and design of the utility tunnel under Act 16, EGLE and USACE would review its construction and environmental impacts and that some deference must be afforded to their determinations. (*Id.* at 17.) However, the ALJ determined that the Commission lacked jurisdiction to consider GHG emissions that may result from oil shipped on Line 5 after it was refined and consumed, as it was not part of the conduct in the application, i.e., the relocation of the pipeline segment. (*Id.* at 19.)

The Commission remands the motion *in limine* in light of the State's notice of revocation of the Line 5 easement

Weeks later, on November 13, 2020, Governor Gretchen Whitmer issued a notice purporting to revoke Enbridge's existing Line 5 easement in the Straits. (MPSC Docket No. 1454, 12/1/23 Commission Order 5.) The Commission remanded Enbridge's September 2 motion *in limine* to ALJ Mack in light of this revocation. (*Id.*)

Once again, Enbridge filed a brief explaining why the scope of this case was properly limited to the relocation of a replacement segment of the line within a new easement. (MPSC Docket No. 0540, Enbridge Br on Remand 1-3.) Enbridge noted that the notice of revocation did not, on its own, impact the 1953 Easement, nor did it impact the operation of Line 5. (*Id.* at 2.)

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Accordingly, the Replacement Project, which depended on the new 2018 Easement, was not affected by the purported revocation. (*Id.* at 2-3.) The Propane Associations filed a brief in support of Enbridge, similarly explaining the purported notice of revocation had no effect on the scope of the proceeding, and that the only question in the proceeding was whether there is a public need to locate the replacement segment into the utility tunnel. (MPSC Docket No. 0543, Propane Associations Br on Remand 2.)

On February 23, 2021, ALJ Mack issued a ruling which was consistent with his October 23, 2020 ruling on the motion *in limine*. (MPSC Docket No. 0602, 2/23/21 Ruling 22.) ALJ Mack noted that shortly after Governor Whitmer issued her intent to revoke and terminate the 1953 Easement on the bottomlands of the Straits, Enbridge filed an action against the State of Michigan for declaratory and injunctive relief, seeking a determination that the revocation was not lawful. (*Id.* at 4.)[13] ALJ Mack found that the revocation was not self-executing, and that Line 5 would continue to operate unless and until a judicial determination was made. (*Id.* at 8.) ALJ Mack distinguished between the easement and the right to operate the pipeline, finding that even without the easement, Enbridge would still have a right to operate Line 5 under the Commission's 1953 Order and that the remainder of Line 5 outside the Straits segment would be unaffected. (*Id.* at 18.) ALJ Mack further explained that the Commission could not revisit the authorization and Enbridge's license to operate Line 5 without taking certain steps under the Administrative Procedures Act (APA). (*Id.* at 16.) ALJ Mack also explained that the purported revocation did not change the activity proposed in the application, or its review under Act 16 and

[13] As will be described further below, the Federal District Court for the Western District of Michigan recently issued an opinion and order in that litigation granting Enbridge's motion for summary disposition. See *Enbridge Energy, LP et al v Gretchen Whitmer et al,* No. 1:20-cv-01141-RJJ-RSK (WD Mich Dec 17, 2025) (slip op) (App 1-45.)

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MEPA. (*Id.* at 20-21.) Accordingly, consistent with its earlier ruling, ALJ Mack again granted in part and denied in part Enbridge's motion *in limine*. (*Id.* at 22.)

Appellants seek leave to appeal ALJ Mack's rulings on the scope of the proceeding, and the Commission agrees in part

Appellants filed an application for leave to appeal to the Commission, and on April 21, 2021, the Commission issued an order, granting in part and denying in part the relief requested by Appellants. (MPSC Docket No. 713, 4/21/21 Order.) The Commission explained that whether Enbridge held the legal right to operate the 641 miles of Line 5 outside of the Replacement Project was not a question of fact but of law, noting that nothing in the Commission's 1953 Order set a termination date for the operation of Line 5, and no party disputes Enbridge's legal authority to continue to operate the other 641 miles not at issue in the proceeding. (*Id.* at 61.) The Commission further explained that a focus on the need for *only* the Replacement Project was strongly supported by the Commission's precedent. (*Id.*) Indeed, the Commission noted that it had "never considered the projected length of usage of a pipeline system in its review of the public need for the replacement or relocation of a segment of the system." (*Id.* at 62.) Accordingly, the Commission affirmed the ALJ's limitation of scope on the public need for Line 5, noting that the parties could still contest whether there was a public need for the Replacement Project, whether the Replacement Project is designed and touted reasonably, and whether the Replacement Project meets or exceeds current safety and engineering standards. (*Id.* at 63.)

With regard to the MEPA review, the Commission found that it could not distinguish the purpose of the Replacement Project from the products being shipped through it and found that the Commission was obligated to conduct a MEPA review of the products being shipped through Replacement Project. (*Id.* at 64.) Accordingly, the Commission held that Appellants could

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introduce evidence addressing the issue of GHG emissions and any pollution, impairment, or destruction arising from the activity proposed in the application. (*Id*. at 66.)

Finally, the Commission agreed with ALJ Mack that consideration of the Revocation Notice was unnecessary to make findings in this case, noting that the 2018 Easement grant and Act 359 allowing construction of the tunnel were unaffected by the Revocation. (*Id.* at 67.) However, the Commission noted that should the State prevail, Enbridge would lose the ability to use the Dual Pipelines, and therefore the Commission was "unwilling to exclude evidence under MEPA that compares the pollution, impairment or destruction attributable to operating 4-mile pipeline segment in the Straits with non-operation 4-mile dual pipeline segments." (*Id.*) In other words, the Commission refused to prohibit arguments and evidence addressing feasibility and prudence of alternatives, both in terms of alternative pipeline and non-pipeline shipping arrangements and alternatives to the products being shipped, given the then-pending litigation regarding the purported Revocation. (*Id.* at 68.)

After two years of testimony and thousands of exhibits, the Commission approves Enbridge's application

Once the scope of the evidence to be introduced in the case was established, the parties introduced testimony and exhibits over the course of nearly two years, before the Commission finally issued a final order approving the Replacement Project. (MPSC Docket No. 1454, 12/1/23 Order 7-15, 347.)

In its 350-page Order reviewing the extensive testimony and arguments by all of the parties, the Commission found that (1) Enbridge established a public need for products to be shipped through the Replacement Project and the need to locate the Straits Line 5 segment inside

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the tunnel, and as such, established the public need for the Replacement Project;[14] (2) that the route, location, and design of the Replacement Project in a tunnel beneath the lakebed of the Straits is reasonable and prudent;[15] and (3) that the Replacement Project meets or exceeds current safety and engineering standards.[16] (*Id.* at 305, 322, 325.) Having determined that the Replacement Project satisfied all Act 16 criteria, the Commission conducted a MEPA review of the Replacement Project. (*Id.* at 326.) The Commission found that the construction of the Replacement Project would cause some impairment to the environment. (*Id.* at 328-329.) Accordingly, the Commission could not approve the Project unless there was a feasible and prudent alternative. (*Id.* at 331.) The Commission analyzed all six of the original alternative options included in the 2017 Dynamic Risk Report commissioned by the State, as well as additional alternatives suggested by the parties, including the "no-pipeline" and "no-action" alternatives put forth by Appellants. (*Id.* at 331-346.) After reviewing the record evidence, the Commission concluded there were no feasible and prudent alternatives to the Replacement Project pursuant to MEPA. (*Id.* at 347.) Notably, while some of the alternatives were technically feasible, the Commission found that none of the alternatives, including a "no action alternative," were prudent because the risk of release and the environmental impairments were greater than

[14] Notably, the Commission found the Replacement Project "essentially eliminates the risk of adverse impacts that may result from a potential release from Line 5 at the Straits" and protects "unique ecological and natural resources that are of vital significance to the State and its residents, to tribal governments and their members, to public water supplies, and to the regional economy." (MPSC Docket No. 1454, 12/1/23 Order 71 at p. 305.) Accordingly, the Commission concluded that there is substantial evidence of the public need for the products shipped through the Straits Line 5 segment and a public need to replace the Dual Pipelines with the Replacement Project. (*Id.* at 302-303.)

[15] The Commission subjected this element to the condition that no third-party utilities are co-located in the tunnel without further application to, and approval by, the Commission (Docket No. 1454, 12/1/23 Order 322.)

[16] The Commission set certain engineering and testing conditions not at issue in this appeal. (Docket No. 1454, 12/1/23 Order 325.)

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those associated with the Replacement Project, for which the "[r]isk of product release into the Straits" was considered to be "[n]egligible—considered virtually zero." (*Id.* at 338-342.) Accordingly, the Commission approved the Replacement Project. (*Id.*)

The Court of Appeals affirmed the Commission's final order

Appellants appealed the Commission's final order and continued to attempt to expand the appropriately narrow scope of the Commission's review under Act 16 and MEPA and to challenge the public need for Line 5 itself. The Court of Appeals affirmed the Commission's final order, holding that the Commission did not abuse its discretion on its ruling on Enbridge's motion *in limine* to exclude evidence that was not relevant to the Replacement Project. (COA Op 20). The Court of Appeals also noted that the Commission ultimately allowed Appellants the "opportunity to present evidence of possible alternatives for Line 5" and that the Commission considered the viability of those alternatives in the public need analysis. (*Id.* at 22.) The Court of Appeals also held that reliance on the public trust doctrine was "misplaced," given that the Commission has no common-law powers to consider this common-law issue. (*Id.*)

The Court of Appeals also analyzed the Commission's MEPA analysis. (*Id.* at 24.) Given that the Commission had "concluded that there would be some environmental impairment as a result of the Replacement Project," the Court of Appeals reviewed the Commission analysis on whether there was a feasible and prudent alternative. (*Id.*) The Court "conclude[ed] that the [Commission's'] MEPA decision [wa]s adequately supported by the record." (*Id.*) The Court further concluded that the GHG-specific arguments related to the Commission's MEPA analysis also did not warrant reversal or remand. (*Id.* at 30.)

The Court of Appeals therefore concluded that the Commission had "issued a comprehensive and detailed opinion" and thus found "no basis for ordering a reversal or remand." (*Id.* at 31.)

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Appellants file applications for leave to appeal to this Court

Appellants filed multiple applications to this Court. Joint Appellants asserted that the Court of Appeals erred by (1) not applying *de novo* review to the Commission's determination that there are no feasible and prudent alternatives to the Replacement Project pursuant to MEPA, (2) by affirming the Commission decision on Enbridge's motion *in limine* limiting the scope of the proceedings to the Replacement Project, and (3) by affirming the Commission's MEPA analysis because, according to the Joint Appellants, the Commission's broad consideration of the impacts of alternatives to the Replacement Project was inconsistent with its decision to limit the scope of the proceedings. FLOW asserted that the Court of Appeals erred in determining that the public trust doctrine is inapplicable to this case.

This Court granted leave in both applications. For Joint Appellants' application, this Court asked whether the Court of Appeals erred by (1) applying 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 or the public trust in these resources under MCL 324.1705(2) and (2) affirming the Commission's limitation on the scope of the evidence to be reviewed regarding its determinations under MEPA.

For FLOW's application, this Court asked whether the Commission was required to comply with the common-law public trust doctrine under MEPA and if not, whether the common-law public trust doctrine nonetheless requires such compliance, and if so, what a proper public trust analysis would entail in Commission proceedings.

STANDARD OF REVIEW

The issue of whether the Court of Appeals erred by applying a deferential standard of review concerns the application of the correct standard of review. This Court reviews *de novo* the

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application of the correct standard of review. *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001).

Whether the Court of Appeals erred in affirming the Commission's limitation on the scope of the evidence to be reviewed regarding its determinations under MCL 324.1705(2) of MEPA concerns the Commission's decision to admit or exclude evidence. "[T]he decision whether to admit or exclude evidence is reviewed for an abuse of discretion." *Elezovic v Ford Motor Co*, 472 Mich 408, 419; 697 NW2d 851 (2005). An abuse of discretion occurs "when the result is so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but [the] defiance [of it][.]" *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002).

The issue of whether MCL 324.1705(2) requires the Commission to comply with the common-law public trust doctrine is an issue of statutory interpretation. This Court reviews *de novo* questions of statutory interpretation. *People v Gardner*, 482 Mich 31, 47; 753 NW2d 78 (2008).

ARGUMENT

The Michigan Constitution commands the Legislature to protect the environment and natural resources of the state. Const 1963, art 4, §52. The Legislature implemented this command by enacting MEPA, contained in Part 17 of the Natural Resources and Environmental Protection Act. MCL 324.1701 *et seq*.

Part 17 creates three paths for MEPA review. MCL 324.1701(1), (3), (4). First, a plaintiff can file an action in circuit court to challenge a party's conduct that is allegedly causing pollution of the state's natural resources. MCL 324.1701(1). In such an action, a plaintiff must make a "*prima facie* showing that the conduct of the defendant has polluted, impaired, or destroyed or is

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likely to pollute, impair, or destroy the air, water, or other natural resources, or the public trust in these resources." MCL 324.1703(1). Then, "[t]he defendant may rebut the plaintiff's showing with contrary evidence or raise an affirmative defense that (1) there is no feasible and prudent alternative to the conduct and (2) the "conduct is consistent with the promotion of the public health, safety, and welfare in light of" the state's concern with protecting Michigan's natural resources." *Preserve the Dunes, Inc v Dep't of Environmental Equality*, 471 Mich 508, 514; 684 NW2d 847 (2004) (citing MCL 324.1703(1)).

Second, where a lawsuit is filed under Section 1701, a court may nonetheless "direct the parties to seek relief" in available administrative proceedings. *Id.* (citing MCL 324.1704). Where this occurs, the court "retains jurisdiction of the action pending completion of the action to determine whether adequate protection from pollution, impairment, or destruction is afforded." MCL 324.1704. When the administrative proceedings are completed, MEPA directs the court where the MEPA action was filed to "adjudicate the impact of the defendant's conduct on the air, water, or other natural resources, and on the public trust in these resources[.]" MCL 324.1704(3), (4). To accomplish this, the court may order that additional evidence be taken. MCL 324.1704(3).

Third, courts and agencies may permit a person "to intervene as a party" in administrative, licensing, or other proceedings if they 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." MCL 324.1705(1). Here, MEPA 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

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> 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. [MCL 324.1705(2).]

At issue here is the third path: Appellants intervened in the proceeding to license the Replacement Project under Act 16 to allege that the continued operation of Line 5 as a whole would impair natural resources. The Commission determined that the "conduct" consisted of only the Replacement Project, but that construction of the Replacement Project *would* result in some environmental impairment. (COA Op 24.) Nevertheless, the Commission authorized the Replacement Project because there were no feasible and prudent alternatives. (*Id.*) The Court of Appeals concluded that the Commission's overall MEPA analysis was "adequately supported by the law and evidence." (COA Op 18, 23 (citing Const 1963, art 6, § 28).)

The Court should affirm the Court of Appeals' conclusions concerning the Commission's grant of a license to construct the Replacement Project for three reasons. First, the Court of Appeals did not err in giving deference to the Commission's impairment determination, but even if it did, the Court of Appeals' finding *favored* Appellants, so the outcome here would not change. Second, the Commission did not abuse its discretion by limiting the scope of the proceedings to exclude evidence that was not relevant to the Replacement Project. Third, the Commission's comprehensive MEPA analysis inherently included a consideration of the public trust, and the Court of Appeals properly concluded that Commission, which possesses no common law powers, lacked statutory authority to independently consider the common-law public trust doctrine.

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I. The Court of Appeals did not err in holding that Section 1705(2) does not require *de novo* review, and even if it did, the outcome would not change here.

Appellants argue that under MCL 324.1705(2), the Court of Appeals erred in affirming the Commission's order granting a license for the Replacement Project under a deferential, rather than *de novo*, standard of review to the likely environmental effects of the Replacement Project. But the Court of Appeals was not required to review *de novo* whether the proposed conduct will pollute, impair, or destroy the air, water, or state's other natural resources or the public trust in these resources under MCL 324.1705(2). And even if the Court of Appeals was required to conduct a *de novo* review, that would not change the outcome here since the Commission determined that there would be some environmental impacts from construction of the Replacement Project, but it nevertheless authorized the conduct because there were no feasible or prudent alternatives. (COA Op 24; MPSC Docket No. 1454, 12/1/23 Order 329-330.)

A. *De novo* review is not required outside of an independent environmental protection case filed pursuant to MEPA.

The Court of Appeals was not required to make a *de novo* determination on whether the Replacement Project would pollute, impair, or destroy the air, water, or state's other natural resources or the public trust in these resources. The plain language of MCL 324.1705(2) does not support an interpretation under which an appellate court must apply *de novo* review to the MEPA analysis within the context of a permitting decision. And neither this Court's precedents, including *West Michigan Environmental Action Council, Inc v Natural Resources Commission*, 405 Mich 741; 275 NW2d 538 (1979), nor the legislative purpose of MEPA compel a different outcome.

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1. *The Court of Appeals' interpretation of Section 1705(2) is consistent with the plain language of the statute and the fundamental role of appellate courts.*

The plain language of MCL 324.1705(2) does not require the Court of Appeals to review *de novo* whether the Replacement Project would impair the environment. When interpreting a statute, this Court's "ultimate concern is a proper construction of the plain language of the statute." *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 108; 754 NW2d 259 (2008). Nowhere in the text of Section 1705 does the Legislature use the phrase "*de novo*."

Appellants instead try to manufacture a *de novo* review standard by asserting that the phrase "in any judicial review" and the word "determine" mean that in all judicial proceedings, the court must act as a factfinder with respect to the alleged pollution, impairment, or destruction of the natural resources. But the word "determine" does not require *de novo* review. In *Mixon v Mixon*, the Court of Appeals considered the meaning of "determine" in MCL 552.101(4), which requires a divorce judgment to "determine the rights of the husband and wife" to any pension benefits. 237 Mich App 159, 166; 602 NW2d 406 (1999), lv denied 461 Mich 904 (1999). The Court of Appeals held that the "plain meaning of the word 'determine' is 'to settle or resolve . . . by an authoritative or conclusive decision.' " *Id.* (citing Random House Webster's College Dictionary (1992), p. 368).

In contrast, in considering the meaning of "*de novo*," this Court has said that there is a "variety of terminology and application [so] that a single clear standard of appellate review does not emerge." *Beason v Beason*, 435 Mich 791, 799; 460 NW2d 207 (2007). In *Benson*, this Court considered the proper standard of review by appellate courts in a divorce action, historically reviewed "*de novo*" as an action in equity. *Id.* at 798-799. "Mindful of [appellate courts'] distance from the trial bench function, this Court held that "[d]espite the repeated citation of a standard of review *de novo* in divorce cases," the Court of Appeals was "required to accept the

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trial court's findings unless those findings were clearly erroneous." *Id*. at 799, 802-803. Indeed, with regard to factual determinations, this Court held "appellate courts have consistently, and properly, given deference to the factual findings of the trial court" and therefore a reviewing court may not "substitute its judgment for that of the trial court; if the trial court's view of the evidence is plausible, the reviewing court may not reverse." *Id.* at 805.

Similarly, under Appellants' interpretation of "*any* judicial review," *de novo* review would not stop at the Court of Appeals but would also require this Court to engage in fact-finding and *de novo* review of alleged pollution or impairment to the environment for a host of judicial and administrative decisions. Appellants have not provided an example of when this Court has authorized a similar, repeated *de novo* review or fact-finding on multiple levels. Moreover, in *Blazo v Neveau*, this Court explained it "does not review questions of fact after determination of same by the trier of the facts and review by the Court of Appeals." 382 Mich 415, 417-418; 170 NW2d 62 (1969).

Critically, Appellants' position does not take into account the distinct functions of a trial court and reviewing court. As the Court of Appeals correctly recognized, this case does not involve an independent MEPA action filed in circuit court, but rather, involves a MEPA analysis in the context of an Act 16 proceeding. (COA Op 23.) In other words, the Court of Appeals was not acting as a factfinder but was acting as an appellate court reviewing the Commission's MEPA decision. See Cont. 1963, art. 6, § 28; MCL 462.26(8). This Court has repeatedly held that the role of appellate courts does not include fact-finding. *Bean v Directions Unlimited, Inc,* 462 Mich 24, 34-35; 609 NW2d 567 (2000) (holding that the Court of Appeals clearly erred when it "essentially injected itself into the role of trier of fact"); *People v Hernandez*, 443 Mich

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1, 8; 503 NW2d 629 (1993)[17] ("Without a complete record, the appellate court must engage in fact finding, as occurred in *Moore,* which is not the court's role."); *People v Xun Wang*, 505 Mich 239, 258; 952 NW2d 334 (2020) ("When reviewing the sufficiency of the evidence, appellate courts must not interfere with the fact-finder's role of deciding credibility."); *Douglas v Allstate Ins Co*, 492 Mich 241, 284; 821 NW2d 472 (2012) (Cavanagh J, dissenting) ("[T]he idea that an appellate court can determine the best evidence in a case has been consistently rejected as an improper invasion of the fact-finder's role as 'the sole judge of the facts.' " (citing *People v Wolf*, 440 Mich 508, 514-515; 489 NW2d 748 (1992)).)

This distinction between factfinder and reviewing court is particularly important in a situation like this one that involves the exercise of agency expertise. Indeed, in areas of specialization or expertise, the Legislature often delegates to an administrative agency the "role of ultimate factfinder, while limiting the judiciary to the role of guardian of procedural fairness." See *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 702, n 5; 614 NW2d 607 (2000).

In other agency appeals, this Court has rejected attempts to interpret similar provisions as providing multiple levels of fact-finding, even where the provision specifically states that review shall be *de novo*. For example, in *Walker v Wolverine Fabricating & Manufacturing Co Inc*, this Court interpreted a constitutional provision stating that appeals to the circuit court from final decisions of the Civil Rights Commission (CRC) shall be "tried *de novo*." 425 Mich 586, 589; 391 NW2d 296 (1986). The question before this Court was whether this provision required an entirely new evidentiary hearing or whether the circuit court could conduct a hearing based on the CRC record. *Id.* This Court held that the phrase "appeal . . . tried *de novo*," was ambiguous, but that based on the background and language, this language required circuit courts to take a

[17] Abrogated on other grounds by *People v Mitchell*, 454 Mich 145; 560 NW2d 600 (1997).

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"fresh look at the evidence and testimony in the record produced before the agency and . . . determin[e] whether the CRC's factual findings and legal conclusions are supported by competent, material, and substantial evidence." *Id.* at 590.

In reaching this conclusion, the *Walker* Court considered its earlier holding in *Lesniak v FEPC*, 364 Mich 495; 111 NW2d 790 (1961). There, this Court reviewed a similar provision in the Fair Employment Practices Act and ultimately concluded that the appeal to the circuit court would be for "review for legal error or arbitrary action the findings of fact and decisions of the fair employment practices commission." *Id.* at 505-506. The *Lesniak* Court found that to set up an "elaborate machinery to perform a specific administrative and quasi-judicial function, and then to provide for trial *de novo* and a hearing and finding of fact before a jury in circuit court, builds an irreconcilable contradiction into the framework of the statute." *Id.* at 504. The Court further explained that "legislative attempts to delegate the fact-finding functions of administrative bodies to the courts . . . violate[d] the separation of powers doctrine." *Id.* (citing *In re Fredericks*, 285 Mich 262, 280 NW 464 (1938) (explaining that the legislature may not "foist nonjudicial functions upon the courts.").)

The *Walker* Court considered the analysis in *Lesniak* to be "very persuasive." 425 Mich at 606. Given that a party has a "wholly separate cause of action and remedy under the Civil Rights Act," the Court found it "unlikely" that the Legislature intended to provide for multiple opportunities to present evidence. *Id.* at 614-616. Instead, this Court found that such a result would reduce the CRC decision "to, at best, an advisory opinion and, at worst, a pointless consumption of time and resources for all parties involved." *Id.* at 616. Accordingly, the Court concluded that a final decision of the CRC may be appealed to the circuit court, which "shall determine whether the CRC's factual findings and legal conclusions are supported by competent,

material, and substantial evidence on the whole record, and whether it acted arbitrarily or without authority." *Id.* at 617. The same result should be reached here.

2. *The Court of Appeals' interpretation of Section 1705(2) is consistent with this Court's precedents.*

This Court of Appeals' decision is also consistent with this Court's precedent in *West Michigan Environmental Action Council, Inc v Natural Resources Commission*, 405 Mich 741; 275 NW2d 538 (1979) (*WMEAC*). There, the plaintiffs attempted to intervene in Department of Natural Resources (DNR) proceedings concerning permit applications for exploratory wells for oil and gas development on state-owned land. *Id.* at 748-749. The DNR rejected the intervention and granted permits for ten wells. *Id.* at 749. The plaintiffs filed an independent MEPA complaint in circuit court claiming that the DNR consent order was unlawful and was likely to lead to the impairment of wildlife in the area. *Id*. at 749-750. A trial was held in the circuit court and all parties presented evidence on the likely effect of the drilling of the wells. *Id.* at 751, 758-759.

The trial court "deferred to the DNR's conclusion that no pollution, impairment or destruction of the air, water or other natural resources or the public trust therein was likely to result from the contemplated drilling." *Id.* at 752. This Court concluded that the circuit court judge "erred in failing to exercise his own totally independent judgment." *Id.* at 754. To arrive at this conclusion, this Court considered that in MEPA, "the court in which suit is filed retains original jurisdiction of the matter, even if it chooses to remit parties to administrative proceedings," and that the "court has a responsibility to 'adjudicate' and 'determine' whether 'adequate protection from pollution, impairment or destruction has been afforded.' "*Id.* at 753,

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citing MCL 324.1704.[18] The Court also noted that "the usual standards for review of administrative actions" were "inapplicable" under the prior version of MCL 324.1704 "once an environmental protection act case has been filed in a circuit court." *Id.* at 754.

The Court also considered the legislative history of MEPA and noted that in prior decisions it had acknowledged that the "efficacy" of MEPA "will turn on how well circuit court judges meet their responsibility for giving vitality and meaning to the act through detailed findings of fact." *Id.* (citing *Ray v Mason Co Drain Comm'r*, 393 Mich 294, 307-308; 224 NW2d 883 (1975)). The Court then considered the trial court record, noting that there was "little, if any dispute that that the drilling of the exploratory wells will have some adverse impact upon some wildlife," and that the trial court had similarly concluded that there was "no question that adverse impacts" would be present on wildlife. *Id.* at 755. Given this record, the Court found that the plaintiffs had met their burden of establishing a prima facie case of pollution and reversed. *Id.* at 754-755, 760.[19]

This case differs from *WMEAC* in several respects. First, in *WMEAC,* the plaintiffs filed a MEPA case in the circuit court under MCL 324.1704, whereas here Appellants intervened in Commission proceedings under MCL 324.1705. MCL 324.1704 requires the court to "adjudicate the impact of the defendant's conduct" on the environment "[u]pon completion" of any administrative, licensing, or other proceedings, and that the court "may order that additional evidence be taken." MCL 324.1705, in contrast, states that in the administrative proceedings themselves, and judicial review of such proceedings, the "alleged pollution [or] impairment .. . . shall be determined." Under MCL 324.1704, the circuit's court's adjudication of the impact of

[18] At the time, MCL 691.1204.

[19] Notably, the defendants did not raise any affirmative defense, but rather rested their case on the plaintiff's failure to make a *prima facie* showing. *Id.*

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the defendant's conduct on the environment is the *only* determination that is made. Under MCL 324.1705, the administrative agency *must determine* the alleged pollution or impairment to the environment in the first instance.

How this plays out in *WMEAC* as compared to this case is crucial. In *WMEAC,* the trial judge concluded that there was "no question" of adverse impact to the environment, the defendant did not present any evidence of feasible and reasonable alternatives, but the trial judge nevertheless deferred to the DNR and declined to enter an injunction prohibiting the drilling of the wells. The trial court's failure to exercise independent judgment meant that the impact to the environment was never actually adjudicated or determined. As the court noted, MEPA "would not accomplish its purpose if the courts were to exempt administrative agencies from the strict scrutiny which the protection of the environment demands." *Id.* at 754.

Indeed, this Court has, in other opinions, suggested that there must be *a* substantive adjudication of the impact to the environment under MEPA. See *Oscoda Chapter of PBB Action Committee, Inc v Dep't of Natural Resources*, 403 Mich 215; 268 NW2d 240 (1978) (finding that a circuit court's findings that the possibility of impairment or pollution was almost-nonexistent was "fully supported by the record."); *Ray v Mason Co Drain Com'r*, 393 Mich 294; 224 NW2d 883 (1975) ("The three-sentence findings of facts and conclusions of law, from our discussion so far, clearly fail to meet either the requirements of GCR 1963, 517 or the EPA. The matter is therefor [sic] remanded to the trial court for further findings not inconsistent with this opinion."); *Nemeth v Abonmarche Dev Inc*, 457 Mich 16; 576 NW2d 641 (1998) ("the trial court made findings of fact, to conclude that defendants had not successfully rebutted plaintiffs' prima facie case"). Here, the Commission *did* strictly scrutinize the extensive evidence concerning the

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impact to the environment that submitted to the Commission and the Court of Appeals found that decision to be supported by the record.

3. The Court of Appeals' interpretation of Section 1705(2) is consistent with legislative intent of MEPA.

Joint Appellants argue that deferential judicial review of agency MEPA determinations under Section 1705 would undermine MEPA's legislative purpose, disincentivize intervention in administrative proceedings, and compel plaintiffs to file parallel circuit court suits. Not so. Appellants cite *Ray* to suggest that the sole goal of MEPA was to keep agencies in line. But as this Court explained in *Ray*, MEPA's "dramatic change" was to allow for "for participation by individuals or groups of citizens." 393 Mich at 305. "But the [M]EPA does more than give standing to the public and grant equitable powers to the Circuit Courts, it also imposes a duty on individuals and organizations both in the public and private sectors to prevent or minimize degradation of the environment which is caused or is likely to be caused by their activities." *Id.* at 306. Section 1705 accomplishes both goals by affording individuals and groups the opportunity to intervene in administrative proceedings, and by requiring administrative agencies to partake in an environmental analysis under MEPA.

Joint Appellants also cite Professor Sax, "author of the document that became MEPA," to suggest that judicial review is the cornerstone of the legislative scheme. (Jt Appellants Br 21 (quoting *Lakeshore Group v State*, 510 Mich 853, 857; 977 NW2d 789 (2022) (WELCH, J. dissenting)).) Indeed, by replacing "circuit court" with "reviewing court" in their Brief, Joint Appellants suggest that suggest that MEPA's scheme is based on judicial review. (*Id.* at 22.) But Professor Cox's full quote tells a different story:

> Indeed, section 5 of the EPA is designed to give the circuit court ample authority to see that *somewhere* the requirements of the EPA are considered-in an administrative proceeding if one be available- with ultimate determination left to the circuit court.

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> Thus, once a case like *Brotz* is in the circuit court, the EPA appears to allow the court to follow one of several paths. It can, in effect, remand to the Public Services Commission and/or to the probate court for the taking of evidence on environmental issues, reserving to itself a final determination on the question of compliance with the EPA; or it can take testimony itself and render an original opinion on that question.[20]

MEPA's purpose is therefore satisfied so long as "*somewhere* [its] requirements are considered." The circuit court's "ample authority" as explained by Professor Cox refers to the choice it has on how to take evidence in a MEPA case filed in the circuit court, through an agency or on its own accord, to enable to circuit court to make its MEPA determination. Deferential review by an *appellate* court is outside of this scenario, and does not exempt agencies "from the strict scrutiny which the protection of the environment demands," as Appellants suggest. (Jt Appellants Br 23 (citing *WMEAC*, 405 Mich at 754.) On the contrary, if an agency's MEPA analysis is not adequately supported competent, material, and substantial evidence, it must be overturned by the appellate courts. Const 1963, art 6, § 28; *In re Consumers Energy Co*, 279 Mich App 180, 188-189; 756 NW2d 253 (2008).

* * * *

In sum, even where the statute or established precedent explicitly calls for *de novo* review, this Court has held that appellate courts should defer to factual findings made at the trial level—particularly in situations involving agency expertise—and that multiple levels of factual findings, rather than a determination that the record was properly supported, would pointlessly consume time and resources. Therefore, it would be a novel proposition for this Court to hold that MCL 324.1705 requires *de novo* review, where its plain language suggests the opposite.

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[20] Sax & DiMento, *Environmental Citizen Suits: Three Years' Experience Under the Michigan Environmental Protection Act*, 4 Ecology L Q 1, 20 (1974).

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Instead, *WMEAC,* other decisions by this Court, and MEPA's intent and history require that a stringent analysis occur by *a* factfinder. Here, the Commission considered voluminous exhibits and significant testimony concerning Appellants' allegations of environmental pollution or impairment. The Court of Appeals was not required to conduct a *de novo* review of this immense record.

B. *De novo* review of the environmental impact of the Replacement Project would not change the outcome of this case.

In its order granting the application, this Court asked the parties to address, in relevant part, whether "the Court of Appeals erred by: (1) applying 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 or the public trust in these resources." But even assuming *arguendo* that the Court of Appeals should have reviewed this *de novo*, that would not change the outcome here. This is because the Court of Appeals *did* conclude that the construction of the Replacement Project would cause some impairment of the natural resources, so Appellants would not be harmed by any error, especially because any such error would not impact the Court of Appeals' conclusion from the second half of the Section 1705(2) analysis.

The finding to which the Court of Appeals deferred was the Commission's finding that "there *would* be some environmental impairment as a result of the Replacement Project." (COA Op 24.) In other words, the Court of Appeal's "deference" to the Commission resulted in precisely the finding for which Appellants advocate—a finding that there would be an impairment of the natural resources of the state from construction of the Replacement Project. Thus, even if the Court of Appeals had not deferred to the Commission on this point, Appellants would not obtain any more relief than they are seeking.

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The Court of Appeals' finding of impairment is critical because it triggered the second step in the 1705(2) analysis. Under Section 1705(2), the first step is to determine if there will be pollution, impairment, or destruction of the natural resources. If there is a determination of pollution or impairment, the second step is to analyze whether there is a feasible and prudent alternative to the proposed conduct. MCL 324.1705(2). If there is no feasible and prudent alternative, the conduct can be approved. *Id.*

After finding that there would be some impairment to the natural resources from construction of the Replacement Project under the first step of the analysis, the Court of Appeals went on to analyze whether a feasible and prudent alternative exists, and concluded that, under the second step of the analysis, the Commission correctly determined that the conduct could be authorized because there were no feasible and prudent alternatives. (COA Op 24-25.) But whether the Court of Appeals erred in deferring to the Commission's finding on the second step—that there are no feasible and prudent alternatives—is not part of the question presented and, thus, is not before this Court. *Rowe v Montgomery Ward & Co*, 437 Mich 627, 718; 473 NW2d 268 (1991) ("It is well established that this Court will not ordinarily review questions not separately stated in the statement of the questions presented for review or where leave to appeal has been granted in the statement of questions involved."). Nor is there any indication in either the plain language of MCL 324.1705 or this Court's precedent to suggest that a *de novo* review of the second step—the feasible and prudent alternatives analysis—is required. While Appellants assert several times throughout their brief that *de novo* review should apply to both steps in the analysis because Section 1705(2) requires the reviewing courts to "determine" both the alleged pollution *and* whether feasible and prudent alternatives exist (Jt Appellants Br 16, 17, 26), the statute says only that "the alleged pollution, impairment, or destruction of the air, water, or other

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natural resources, or the public trust in these resources, shall be determined." MCL 324.1705(2).[21]

Accordingly, even if the Court of Appeals were required to apply a *de novo* standard of review to Appellants' allegations of environmental pollution or impairment, the error would not change the outcome.

II. The Court of Appeals correctly determined that the Commission did not abuse its discretion in excluding evidence that was irrelevant to the statutorily defined scope of the Replacement Project.

The Court of Appeals properly affirmed the Commission's limitation on the scope of the evidence to be reviewed regarding its determinations under MCL 324.1705(2) of MEPA and its decision to exclude evidence of the history and risk of oil spills along the entire length of Line 5 in those determinations. Longstanding Commission and Michigan precedent establish that the Commission's review in this case was limited to the Replacement Project, and namely, whether (1) there is a public need to replace the existing dual pipelines on the bottomlands in the Straits of Mackinac with a single pipeline in the utility tunnel, (2) the Replacement Project is designed and routed reasonably, (3) the Replacement Project meets or exceeds current safety and engineering standards, and (4) there are reasonable and feasible alternatives to the Replacement

[21] The plain language used in each part of Section 1705 is instructive. "Judicial review" typically results in an *affirmance* or *reversal* of administrative decisions, whereas administrative, licensing, and permitting agencies typically authorize conduct in the first instance. See *MERC v Detroit Symphony Orchestra*, 393 Mich 116, 121; 223 NW2d 283 (1974) (citing Const 1963, art 6, § 28). Moreover, the "MEPA Deskbook" cited by Appellants states that "MCL 324.1705(2) prohibits *administrative agencies* from authorizing or approving conduct that will cause environmental harm[.]" State Bar of Michigan Environmental Law Section. See Haynes, ed., State Bar of Michigan, Michigan Environmental Law Deskbook, Michigan Environmental Protection Act, § 14.80 (2018), available at https://tinyurl.com/jytej9xj (hereinafter "MEPA Deskbook").

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Project. This is the only logical conclusion given that, regardless of the Commission's decision on Enbridge's application, Line 5 would continue operating in its current location and Enbridge would enjoy the same rights in continuing to operate the other 641 miles of Line 5 not subject to the application in this case. In other words, denial of the application would merely maintain the status quo: operation of the already authorized Line 5 dual pipelines. The question before the Commission was merely whether an improvement to the status quo could be authorized under Act 16 and MEPA.

Appellants first assert that the Court of Appeals' affirmance of a motion *in limine* is reviewed *de novo*. This is incorrect. "[T]he decision whether to admit or exclude evidence is reviewed for an abuse of discretion." *Elezovic*, 472 Mich at 419. An abuse of discretion occurs "when the result is so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but [the] defiance" of it. *Hine*, 467 Mich at 250.

Appellants also assert that the Court of Appeals erred in affirming the Commission because the Commission was required to more fully determine alleged pollution and environmental impacts, including risk of oil spills on Line 5 and GHG pollution from the project. Appellants cite *WMEAC* and assert that the MEPA determination must "extend[] beyond the physical boundaries of the conduct specifically outlined in [a] permit application." (Jt Appellants Br 33.) But what the Court in *WMEAC* considered was construction and development of access roads and pads for the exploratory wells. 405 Mich at 756-757. Here, the Commission already considered the construction of the Replacement Project as part of its analysis. (MPSC Docket No. 1454, 12/1/23 Order 331.) Appellants therefore cannot demonstrate that Commission's

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decision to exclude the history and risk of oil spill along the entire Line 5, and the Court of Appeals' affirmance of that decision, was an abuse of discretion.

As the Court of Appeals explained, the public need for Line 5 was already determined in the 1953 Order, and even *if* the attempts to revoke the easement were successful, the notice of revocation would not revoke the right to operate Line 5 under the Order. (COA Op 11.) Indeed, the purported revocation is only for the *easement*, not Enbridge's license to operate Line 5, which can only be challenged after affording Enbridge the procedural steps required under the Administrative Procedures Act. *Lakehead Pipe Line Co v Dehn*, 340 Mich 25, 37; 64 NW2d 903 (1954); MCL 24.205(a); MCL 24.292(1); *Rogers v Michigan State Bd of Cosmetology*, 68 Mich App 751; 244 NW2d 20 (1976).

Moreover, the Commission's decision was consistent with the plain language of Section 1705, the Michigan Court Rules, and the Commission's precedent. MCL 324.1705 refers to "conduct," and the conduct to be authorized or approved in this case was the Replacement Project. Accordingly, the question properly before the Commission was whether there was a public need to replace the dual pipelines with the Replacement Project. (COA Op 13.) Under MRE 401, evidence that does not pertain directly to the Replacement Project is not relevant to the proceeding. Under Commission precedent, the Commission has always looked at whether there is a need for the construction or relocation of the segment and considered the capacity and safety issues presented by the use of the existing pipeline that is proposed for improvement. (*Id.*) See also *In re Wolverine Pipe Line Co*, Case No. U-13225, 2002 WL 31057451 (MPSC, July 23, 2002); *In re Application of Enbridge Energy, LP*, Case No. U-17020, 2013 WL 457974 (MPSC, Jan 31, 2013).

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This makes sense. If Appellants' theory were law, valuable projects aimed at replacing segments of a pipeline to increase pipeline safety and efficiency would seldom be applied for or approved, which could leave the public in a worse environmental position than if the Commission approved a given replacement project. The Commission itself recognized the possible "chilling effect" of such a rule on future efforts to maintain, improve or repair pipeline infrastructure, and correctly noted that "such a finding in this case would prove a disservice to the public." (MPSC Docket No. 713, 4/21/21 Order 69.) This is akin to MRE 707, which prohibits the introduction of evidence on subsequent remedial measures for the express purpose of fostering a public policy of encouraging repairs which might prevent future injury. *Wincher v City of Detroit*, 144 Mich App 448, 455-456; 376 NW2d 125 (1985).

For this same reason, expanding review of an application for replacement of a small segment of pipeline to revisit the pipeline in its entirety would be contrary to the public policy in Michigan of ensuring and gas development and transportation as well as pipeline safety. See, e.g. EO 2015-12. Indeed, the precedential impact of such a decision would impact future business and industry efforts to make improvements where permits are required and would likely divert any capital investments to projects or in locations where there is more certainty. This could have far reaching consequences on the Michigan economy and natural resources, as well as the public health and safety of its citizens.

The Court of Appeals therefore correctly concluded that there was no basis to reverse the Commission's decision. But even if this were not the case, Appellants' argument that the Commission was required to determine alleged likely effects of pollution or impairment from Line 5 oil spills because the "dubious future of the Dual Pipelines makes th[e] [Replacement] project the lynchpin . . . which would enable Enbridge to continue operating Line 5" is now moot. On

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December 17, 2025, the District Court for the Western District of Michigan granted Enbridge's motion for summary disposition and enjoined the attempted revocation of the easement for Line 5, holding that only the federal government can regulate pipeline safety and that attempts by the state to shut down the pipeline interfered with federal foreign policy and trade relations. (*Enbridge Energy, LP v Whitmer*, slip op at 1, App 1.) Thus, Line 5 will continue operating with or without the Replacement Project. Whether evidence of a history of oils spills would have changed the Commission's MEPA determination or its approval of the Replacement Project would extend or secure Line 5's operation is now "nothing but abstract questions of law which do not rest upon existing facts or rights." *TM v MZ*, 501 Mich 312, 317; 916 NW2d 473 (2018).

III. The Commission's MEPA analysis encompassed consideration of the public trust in natural resources, and the Commission did not have the power to consider the common-law public trust doctrine independently from this analysis.

The Court of Appeals also properly held that the Commission was not required to consider the common-law public trust doctrine. As an initial matter, MCL 324.1705 provides that "the alleged pollution, impairment, or destruction of the air, water, or other natural resources, *or* the public trust in these resources, shall be determined[.]" (emphasis added). FLOW points to *Stevens v Creek*, and asserts Section 1705 "commands attention to pollution, impairment, or destruction not only of the air, water, or other natural resources of this State but also of the public trust in these resources." (Flow Br 23 (citing 121 Mich App 503, 507; 328 NW2d 672 (1982).) But *Stevens* merely held that MEPA was not limited to land in which there is a public trust or right to public access. 121 Mich App at 507. There, the Court of Appeals indicated that the language of Section 1703 was "disjunctive" and therefore a plaintiff could "make a *prima facie* case by establishing existing or probable future pollution, impairment or destruction of natural resources *or* of the public trust in those resources." *Id.*

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Section 1705 uses this same disjunctive language. As this Court has noted, "the word 'or' is a disjunctive, used to indicate a disunion, a separation, an alternative." *People v Allen*, 507 Mich 597, 607 n. 16; 968 NW2d 532 (2021). Neither the plain language nor the purpose of Section 1705 indicates that the Commission is required to make a separate, additional determination considering the public trust. As described above, as long as there is *a* MEPA determination, the Act is satisfied. Therefore, as the Court of Appeals correctly concluded, in the context of MEPA, the public trust in natural resources is considered by way of an overall MEPA review. (COA Op 26.)

Moreover, FLOW's own arguments support the inclusion of the public trust in the overall MEPA analysis. FLOW asserts that the public trust doctrine includes a "duty to protect the integrity of public trust resources" because "[t]he public cannot engage in the very activities for which the state holds these resources in trust if the resources are too damaged to support them." (FLOW Br 19.) By this same logic, an analysis of the impact to the natural resources encompasses an analysis of the public's ability to access these resources if they are damaged. That is precisely what occurred here. The Commission undertook a comprehensive MEPA review, and included numerous references to arguments concerning the public trust in its final order. (MPSC Docket No. 1454, 12/1/23 Order 27-29, 33-34, 40, 60, 162, 178, 186-188, 195, 198, 200, 205, 290, 292, 307, 310, 326.) Accordingly, implicit in the Commission's MEPA determination is a consideration of the public trust and public access to the State's natural resources.

Moreover, as the Court of Appeals recognized, the public trust doctrine arises under the common law, and the Commission does not possess any common law powers to consider the public trust independently from its MEPA analysis. (COA Op 22 (citing *Glass v Goeckel*, 473

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Mich 667, 678; 703 NW2d 58 (2005); *Mich Union Carbide Corp v Pub Serv Comm*, 431 Mich 135, 146; 428 NW2d 322 (1988)).) The cases cited by FLOW do not contradict this holding.

Indeed, "under longstanding principles of Michigan's common law, the state, as sovereign, has an obligation to protect and preserve the waters of the Great Lakes and the lands beneath them for the public." *Glass*, 473 Mich at 678. And under our Constitution, the power to "provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction" rests with the Legislature. Const.1963, art 4, § 52. Here, the Legislature has already determined that the Replacement Project was "intended to further protect ecological and natural resources held in public trust by the State of Michigan." (COA Op 8.)[22]

In this same vein, FLOW asserts that "the Legislature cannot directly convey interests in public trust resources free of public trust constraints[.]" (FLOW Br 30.) FLOW cites both this Court's decision in *Glass* and the Great Lakes Submerged Lands Act (GLSLA), and argues that the state may not "relinquish this duty to preserve public rights in the Great Lakes and their natural resources" and that EGLE must evaluate whether the Replacement Project will cause pollution that will impair the public trust in Great Lakes waters and bottomlands. (*Id.* at 16, 37-47.) Both *Glass* at the GLSLA refer to the conveyance of property and recognize that the state may convey or enter into agreements regarding land use so long as the public trust is not impaired or substantially injured, and that any such conveyance remains subject to the public rights. *Glass*, 473 Mich at 681; MCL 324.32502. Here, there have already been two conveyances: Enbridge first acquired an easement to operate Line 5 in 1953 and the Mackinac

[22] See also *Enbridge Energy v State*, No. 19-000090-MZ, 2019 WL 6036699, at 9 (Mich Ct Cl Oct 31, 2019) (explaining that the State made the requisite findings when it entered into the 2018 Agreements and issued the easement to the Mackinac Straits Corridor Authority.)

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Straits Corridor Authority acquired an easement in 2018 to construct the utility tunnel.[23] The Commission has no statutory or other legal obligation to evaluate the validity of these prior state actions in an Act 16 proceeding.

Finally, FLOW has not made clear how public rights, which include "fishing, hunting, and boating for commerce or pleasure," *Glass*, 473 Mich at 679, are implicated by the Replacement Project, which the Commission found "essentially eliminates the risk of adverse impacts that may result from a potential release from Line 5 at the Straits and protects unique ecological and natural resources that are of vital significance to the State and its residents, to tribal governments and their members, to public water supplies, and to the regional economy." (COA Op 14.)

Accordingly, the Commission's comprehensive MEPA analysis inherently included a consideration of the public trust in natural resources. But the Legislature did not give the Commission common-law powers to independently consider the common-law public trust doctrine, and any consideration made thereunder has already been made in the context of the 1953 and 2018 Easements.

[23] In her attempt to revoke the 1953 Easement, Governor Whitmer also raised the public trust doctrine, and asserted that the 1953 Easement was void because there was no express finding concerning the public trust doctrine and because of safety concerns. (*Enbridge Energy, LP v Whitmer*, slip op at 28-30, App 28-30.) The district court rejected these arguments, finding that there was evidence that the State did make a finding that the 1953 Easement would "benefit . . . the people of the State of Michigan . . . in furtherance of the public welfare" and that the public trust doctrine, as applied to interstate pipelines, was preempted by the Pipeline Safety Act. (*Id.* at 29-30, App 29-30.)

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CONCLUSION AND REQUESTED RELIEF

For the aforementioned reasons, the Propane Associations respectfully request that this Court affirm the Court of Appeals' decision affirming the Commission's grant of Enbridge's application for the Replacement Project.

Dated: December 22, 2025

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief complies with the type-volume limitation pursuant to MCR 7.212(B). The Brief contains 13,399 words of Times New Roman 12-point proportional type and 2.0 spacing. The word processing software used to prepare this brief was Microsoft Word 360, Version 2308.

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