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STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Kelly, Letica, and Wallace

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

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

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.
_____/

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

AMICUS CURIAE BRIEF OF THE ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY IN SUPPORT OF APPELLEES

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STATEMENT OF QUESTIONS PRESENTED

This appeal stems from a decision of the Michigan Public Service Commission ("MPSC") authorizing Appellee Enbridge Energy Limited Partnership ("Enbridge") to replace a short four-mile segment of its Line 5 Pipeline that crosses the Straits of Mackinac ("Replacement Project") pursuant to the authority vested in the MPSC by Public Act 16 of 1929, MCL 483.1 *et seq.* ("Act 16") and consistent with the procedural requirements imposed upon the MPSC by the Michigan Environmental Protection Act, MCL 324.1701 *et seq*. ("MEPA"). The Court of Appeals affirmed the MPSC's decision. This Court granted leave to appeal and directed the parties to address several legal issues. ABATE offers amicus briefing on the following discrete issue:

1. Whether the Court of Appeals erred by affirming the MPSC's limitation on the scope of the evidence to be reviewed regarding its determination 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?

   Appellants' answer: Yes.

   Appellees' answer: No.

   Court of Appeals' answer: Unanimously, No.

   Amicus Curiae's answer: No.

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I. STATEMENT OF INTEREST OF AMICUS CURIAE

ABATE is a voluntary association of large industrial companies that conduct energy intensive operations throughout the state of Michigan.[1] Present members of ABATE include: Cargill, Inc.; Charles River Laboratories; Cleveland-Cliffs Inc.; Corning, Inc.; The Dow Chemical Company; Edward C. Levy Co.; Enbridge Energy Limited Partnership; Ervin Industries Inc.; General Motors LLC; Gerdau Macsteel INC; Graphic Packaging International, Inc.; Hemlock Semiconductor Operations LLC; J. Rettenmaier USA LP; Linde, Inc.; Marathon Petroleum Corporation; Martin Marietta Magnesia Specialties LLC; Metal Technologies, Inc.; Occidental Chemical Corporation; Pfizer-Kalamazoo; Stellantis; United States Gypsum Company; and Zoetis LLC. Collectively, ABATE's members employ nearly 100,000 Michiganders and spend approximately $700 million on electric power and natural gas in Michigan each year. A significant portion of these expenditures are for hydrocarbon products and associated transportation services. And those hydrocarbon products facilitate ABATE members' substantial use, processing, and manufacturing of a wide range of renewable energy resources and goods.

The primary purpose of ABATE is to participate in state and federal regulatory proceedings to protect the unique interests of energy-intensive businesses in connection with a wide array of utility matters. To that end, ABATE consistently advocates for cost-of-service based energy rates, equitable terms of service, and increased access to a competitive energy market. ABATE is also interested in assuring that rates, surcharges, and conditions of service are adopted in conformance

[1] ABATE is tax exempt under Section 501(c)(6) of the Internal Revenue Code. MCR 7.312(H)(2)(f). Additionally, while Enbridge is a member of ABATE, Enbridge abstained from the ABATE members' decision to participate in this matter as amicus curiae, and has not made a monetary contribution intended to fund preparation or submission of this brief. Consequently, ABATE is also able to represent that no party to this case or their counsel authored this brief in whole or in part, and that no party or their counsel made any monetary contributions intended to fund preparation or submission of this brief. See MCR 7.212(H)(3).

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with the law and in a fair and reasonable manner. Relevantly here, as a representative of some of the largest energy consumers in Michigan, ABATE is not only interested in ensuring common-sense regulation of energy transportation services (including those provided by Enbridge's Line 5 Pipeline) but also in promoting sensible and reasoned regulation of the infrastructure projects that enable the safe and reliable provision of such services and products.

This interest is especially sensitive today with rapidly rising energy demands necessitating the development of new and hardened infrastructure to ensure safety, reliability, and resilience to serve ABATE members, their employees, and their customers. To meet the needs of the future, it is imperative that the ever-expanding list of permitting authorizations required from Michigan's administrative agencies to construct and maintain critical infrastructure in this State remain tethered to the actual "conduct" being authorized by the reviewing agency and not devolve into far reaching, abstract, and suppositional exercises. Injecting the level of ambiguity proposed by Appellants into Michigan's countless administrative proceedings would greatly erode the legal stability and investment certainty needed to meet the challenges of the coming decades. ABATE is concerned that overly intrusive and unpredictable administrative review under MEPA will thwart infrastructure investment in Michigan and serve as a brusque and aimless instrument employed by project opponents (who may not always be completely motivated by concern for the environment) to obstruct critical infrastructure projects.

II. INTRODUCTION

The Court of Appeals was correct in its affirmation of the MPSC's limitation on the scope of the evidence to be reviewed when determining the environmental impacts of Enbridge's Replacement Project pursuant to MCL 324.1705(2) and thus the MPSC's exclusion of evidence of the history and risk of oil spills along the entire length of Line 5 in those determinations. This is so because MCL 324.1705(2) limits an administrative agency's environmental review to the

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"conduct" to be "authorized or approved" in the pending administrative proceeding and because the "conduct" to be "authorized or approved" in the underlying Act 16 proceeding here entailed only the replacement and concrete encasement of a four-mile underwater stretch of the Line 5 Pipeline crossing the Straits of Mackinac. Enbridge simply had not sought to make any changes to the other 641 miles of preexisting pipeline. Expanding agency review of alleged environmental impacts extraneous to the conduct sought to be authorized in the administrative proceeding, as urged by Appellants, goes beyond what is required under MCL 324.1705(2), asks our state agencies to exceed their legislative mandate, and is likely to discourage and otherwise hinder critical infrastructure development in Michigan.

III. COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

Amicus Curiae ABATE adopts the Counter-Statement of Facts and Proceedings presented in the December 22, 2025, Brief of Appellee MPSC. (Brief of MPSC, pp. 2–20.) For convenience, the fact and proceedings most salient to this amicus curiae brief are summarized directly below.

As explained in the Brief on Appeal of Appellee MPSC, the "conduct" subject to the MPSC's review and approval in the underlying Act 16 administrative proceeding involved the replacement of a four-mile stretch of Enbridge's existing Line 5 Pipeline which crosses the Straits of Mackinac underwater ("Replacement Project"). (Brief of MPSC, pp. 2–5.) The Replacement Project was intended to alleviate environmental concerns related to the existing four-mile stretch of dual pipelines which cross the Straits of Mackinac underwater. (*Id.*) To that end, the Replacement Project entailed replacing the dual pipelines with a single pipeline and then encasing that single pipeline in a cement tunnel to better mitigate the risk of an oil spill into the Great Lakes. (*Id.*) In evaluating the Replacement Project, the MPSC found that its authority under Act 16 was limited to determining whether: (1) Enbridge demonstrated a public need for the Replacement Project; (2) the Replacement Project is designed and routed in a reasonable manner; and (3) the

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construction of the Replacement Project would meet or exceed current safety and engineering standards. (*Id.*, pp 6–10.) The MPSC also explained that its review of the Replacement Project under Act 16 must also comply with the requirements of MEPA. (*Id.*, p. 10.)

After significant motion practice and multiple rulings from an Administrative Law Judge, the MPSC determined that evidence related to the history and risk of oil spills along the entire 645-mile length of Enbridge's Line 5 Pipeline was not germane to its review under either Act 16 or MEPA and thus excluded same. (*Id.*, pp. 10–13.) MPSC emphasized that the scope of its review was limited to the four-mile stretch of pipeline sought to be replaced by Enbridge and further that extending its review beyond the Replacement Project would conflict with the MPSC's past practice. (*Id.*) The MPSC, however, determined that it would allow admission of evidence related to greenhouse gas emissions that may result from the construction, operation, and/or products transferred through the Replacement Project. (*Id.*) After considering all the admissible evidence, the MPSC granted Enbridge's application to construct the Replacement Project finding, *inter alia*, that there was a public need for the Replacement Project to mitigate the risk of oil spills within the Straits of Mackinac and that alternatives to the Replacement Project like shutting down the existing pipeline would actually result in more greenhouse gas emissions. (*Id.* pp. 13–17.)

The Court of Appeals affirmed. With respect to the MPSC's Act 16 determination, the Court of Appeals rejected Appellants' general claim of error finding that "the need for Line 5 as a whole was simply not a salient issue in the proceedings because the application was for the Replacement Project, not for the construction of Line 5 as a whole." (COA Op., pp. 18–21). Indeed, the Court of Appeals—like the MPSC—seemed concerned with adopting the all-encompassing review urged by Appellants where such a legal regime would discourage future infrastructure improvements (even those designed to protect the public health, safety, and welfare) by placing

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the applicant's ability to operate existing infrastructure and, thus, its very business in regulatory jeopardy. (*Id.* at 20.)

With respect to the MPSC's MEPA determination, the Court of Appeals rejected Appellants' argument that the MPSC erred by failing to consider the risks of oil spills from Line 5 as a whole when making its environmental findings. (*Id.* pp. 23–24.) Under the plain text of MCL 324.1705(2), the Court of Appeals determined that the "conduct" sought to be "authorized or approved" by the MPSC was the Replacement Project, not Enbridge's operation of the other 641 miles of existing pipeline. (*Id.*) The Court of Appeals also seemed to imply that the MPSC exceeded its obligations under MEPA by considering greenhouse gas emissions with respect to the entirety of Line 5 as opposed to only the construction of the Replacement Project. (*Id.*, p. 25) ("We conclude that the Commission acted appropriately because it *could* have limited its "comparisons" analysis to just alternatives for the Straits segment of pipeline (such as those presented by the MSCA) but instead decided to look to *all* presented alternatives, and ultimately it reached a decision that was supported by the evidence in the record.").

IV. STANDARD OF REVIEW

Amicus Curiae ABATE adopts the Standard of Review presented in the December 22, 2025, Brief Appellees Michigan Propane Gas Association and National Propane Gas Association. (Brief of MPGA and NPGA, pp. 21–22.) Additionally, this Court reviews *de novo* questions of law, such as the proper interpretation of a statute. *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 97; 754 NW2d 259 (2008).

V. ARGUMENT

The Court of Appeals was correct in determining that the MPSC did not abuse its discretion in excluding evidence regarding the history and risk of oil spills along the entire 645-mile length of Enbridge's existing and long-operational Line 5 Pipeline. As the Court of Appeals explained,

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such evidence was neither germane to the MPSC's limited administrative review of Enbridge's application under Act 16 nor to the MPSC's environmental review under MEPA where Enbridge's proposed Replacement Project entailed only the replacement and concrete encasement of a four-mile underwater stretch of the Line 5 Pipeline crossing the Straits of Mackinac. And, from a practical standpoint, deviating from the Court of Appeals' plain and textual reading of MCL 324.1705(2), as urged by Appellants, will have adverse consequences for critical infrastructure development in Michigan.

A. The Court of Appeals' plain and textual reading of MCL 324.1705(2) is sound.

The Court of Appeals' textual and contextual reading of MCL 324.1705(2) was spot-on. In reading statutes, "courts rely on [their] plain language as best evidence of its meaning." *Rouch World, LLC v Dep't of Civ Rights*, 510 Mich 398; 987 NW2d 501 (2022). Of course, "statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended." *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999). Further, "context is a primary determinant of meaning, and for an interpretation that seeks the ordinary meaning of the statute, it is the narrower context drawn from neighboring provisions within a statute that is most appropriate to consider." *TOMRA of N Am, Inc v Dep't of Treasury,* 505 Mich 333, 349; 952 NW2d 384 (2020) (explaining that) (cleaned up).

Here, Section 1705(2) of MEPA states that:

> *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. [MCL 324.1705(2) (emphasis added).]

A wholistic and contextual reading of that language demonstrates that the duties imposed upon an administrative agency via this provision are inescapably tied to the "conduct" being "authorized

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or approved" by the agency in that discrete "administrative, licensing, or other proceeding." *Id*. The phrase "[i]n administrative, licensing, or other proceedings" is a prepositional phrase adding key context for interpretation of this statutory provision and the word "conduct" is the subject of the passive verb phrase "shall not be authorized or approved." In the appropriate grammatical context, *Sun Valley Foods Co*, 460 Mich at 237, therefore, the word "conduct" in Section 1705(2) of MEPA refers to the applicant's proposed activity or project that is the subject of the approval or disapproval that is at issue in the "administrative, licensing, or other proceeding." Indeed, any other reading of MEPA would ignore the limits placed upon administrative agencies as creatures of statute, *York v City of Detroit*, 438 Mich 744, 767; 475 NW2d 346 (1991), and would vastly expand the scope of proceedings beyond the boundaries contained in the governing enabling acts. *Herrick Dist Library v Library of Mich*, 293 Mich App 571, 582–83; 810 NW2d 110 (2011).

Consequently, Section 1705(2) only requires an agency to determine the potential natural resource pollution, impairment, or destruction of the action or undertaking being "authorized or approved" by the agency in that proceeding. Furthermore, Section 1705(2) only requires that an agency consider "feasible and prudent" alternatives that are "consistent with the reasonable requirements of the public health, safety, and welfare" *if* the "conduct" being "authorized or approved" by the agency in that proceeding "has or is likely to" pollute, impair, or destroy natural resources.

In this case, the "conduct" being "authorized or approved" by the MPSC in the Act 16 proceeding was the Replacement Project which involved only a discrete underwater four-mile segment of the Line 5 Pipeline. The plain text of MEPA therefore limited the MPSC's determination of potential natural resource pollution, impairment, or destruction to the Replacement Project. Because the history and risk of oil spills along the other 641-mile of Enbridge's existing and long-operational Line 5 Pipeline bore no relation to the "conduct" that the

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MPSC was asked to "authoriz[e] or approv[e]" in the underlying Act 16 proceeding, the MPSC was correct to exclude such evidence.[2]

B. Appellants' novel and expanded reading of MCL 324.1705(2) will have adverse consequences for critical infrastructure development in Michigan.

The Court should not upset this longstanding and straightforward reading of MCL 324.1705(2). Besides straying from Legislature's intent as expressed through the plain language of the statute, Appellants' new and expanded reading of MCL 324.1705(2) would have significant adverse effects on the planning, financing, and undertaking of critical infrastructure development in Michigan including projects designed to further the public health, safety, and welfare as well as those necessary to manufacture and operate even renewable energy resources. A ruling that Section 1705(2) of MEPA requires administrative agencies to consider potential environmental impacts far removed from the actual conduct being approved in the discrete administrative proceeding at hand creates a level of uncertainty, delay, and cost that could harm not only ABATE members desiring to upgrade or develop critical infrastructure in this state but Michigan's economy as a whole.

Just recently, the United States Supreme Court had the opportunity to confront many of these concerns in the context of the National Environmental Policy Act of 1969 ("NEPA"), 42 USC 4321 *et seq.* Similar to Section 1705(2) of MEPA, NEPA requires federal agencies to undertake an environmental review of "proposed agency action." *Seven Co Infrastructure Coalition v Eagle Co, Colorado*, 605 US 168; 145 S. Ct. 1497; 221 L.Ed. 2d 820 (2025) (emphasis

[2] By considering greenhouse gas emissions beyond the actual construction of the Replacement Project, the MPSC exceeded its mandate under Section 1705(2) of MEPA. The operation of the entirety of Line 5 and the upstream or downstream impacts of the petroleum products transported through Line 5 were not related to the "conduct" to be "authorized or approved" by the MPSC in the Act 16 proceeding. This conclusion is buttressed by the fact that Line 5 has long been in operation and would continue to operate regardless of the Act 16 proceeding.

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added). The case involved the U.S. Surface Transportation Board's consideration of an application by a group of seven counties to construct and operate an approximately 88-mile railroad line to connect an oil rich area in northeastern Utah to the national rail network. *Seven Co*, 605 U.S. at 173. The U.S. Court of Appeals for the D.C. Circuit took issue with the Board's environmental impact statement for reason that it did not sufficiently consider the reasonably foreseeable environmental impacts that could ensue from increased oil drilling upstream of the railroad and increased oil refining downstream of the railroad. *Id.* at 174.

In what the Court characterized as a "course correction of sorts" appropriate "to bring judicial review under NEPA back in line with the statutory text and common sense," a unanimous Court (sans Justice Gorsuch) directed, *inter alia*, that "NEPA does not allow courts, 'under the guise of judicial review' of agency compliance with NEPA, to delay or block agency projects based on the environmental effects of other projects separate from the project at hand." *Seven Co*, 605 US at 169 & 184. The Court held that the D.C. Circuit "incorrectly interpreted NEPA to require the Board to consider the environmental effects of upstream and downstream projects that are separate in time or place from the Uinta Basin Railway." *Id.* at 179. In the Court's view, NEPA did not require the Board "to address environmental effects from projects that are separate in time or place from the 88-mile railroad project at hand—that is, effects from potential future projects or from geographically separate projects" especially where "those separate projects fall outside the Board's authority and would be initiated, if at all, by third parties." *Id.* at 186.

The Court lamented that courts over the years have strayed from a plain common-sense reading of NEPA[3] and engaged in "overly intrusive (and unpredictable) review in NEPA" cases

[3] "Importantly, the textually mandated focus of NEPA is the 'proposed action'—that is, the project at hand—not other future or geographically separate projects that may be built (or expanded) as a result of or in the wake of the immediate project under consideration. *Id.* at 186–87.

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which has "slowed down or blocked many projects and, in turn, caused litigation-averse agencies to take ever more time and to prepare ever longer EISs for future projects." *Id.* at 183. It identified that NEPA has been used as a tool by project opponents "to enlist the courts in blocking or delaying even those projects that otherwise comply with all relevant substantive environmental law" and "to fight even clean-energy projects—from wind farms to hydroelectric dams, from solar farms to geothermal wells." *Id.*

And, mostly relevantly to ABATE's stated concerns, the *Seven Counties* Court aptly explained the not-so-great real-world impact of acquiescing the ongoing NEPA abuse:

> All of that has led to more agency analysis of separate projects, more consideration of attenuated effects, more exploration of alternatives to proposed agency action, more speculation and consultation and estimation and litigation. Delay upon delay, so much so that the process sometimes seems to "borde[r] on the Kafkaesque." *Vermont Yankee*, 435 U.S. at 557, 98 S.Ct. 1197. Fewer projects make it to the finish line. Indeed, fewer projects make it to the starting line. Those that survive often end up costing much more than is anticipated or necessary, both for the agency preparing the EIS and for the builder of the project. And that in turn means fewer and more expensive railroads, airports, wind turbines, transmission lines, dams, housing developments, highways, bridges, subways, stadiums, arenas, data centers, and the like. And that also means fewer jobs, as new projects become difficult to finance and build in a timely fashion. [*Id.*]

These are serious concerns. They are even more palpable when applied at the state level where critical infrastructure projects are highly mobile and located relative to state-specific factors including the fairness and certainty of legal and permitting regimes.

VI. CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, ABATE respectfully requests that the Court affirm the decision of the Court of Appeals and, in so affirming, make clear that administrative agency review under MCL 324.1705(2) is, by its plain text, limited to the "conduct" being authorized by the reviewing agency and does not extend to (i) existing infrastructure or other projects separate in

time or place; (ii) matters not within the statutory jurisdiction of the reviewing agency; or (iii) indirect, attenuated, and speculative environmental effects.

Respectfully submitted,

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Respectfully submitted,

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