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STATE OF MICHIGAN
IN THE SUPREME COURT

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

MSC Nos. 168335; 168346

COA Nos. 369156, 369159, 369161, 369162, 369165 (consolidated)

MPSC Case No. U-20763

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

Appellants,

and

FOR THE LOVE OF WATER,

Appellant,

v.

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

Appellees,

and

ENBRIDGE ENERGY LIMITED PARTNERSHIP,

Petitioner-Appellee.

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF INTERNATIONAL TRANSMISSION COMPANY d/b/a ITC*TRANSMISSION*, MICHIGAN ELECTRIC TRANSMISSION COMPANY, LLC, AND CONSUMERS ENERGY COMPANY

International Transmission Company d/b/a ITC*Transmission*, Michigan Electric Transmission Company, LLC, and Consumers Energy Company (collectively, "Proposed *Amici*") respectfully move this Court pursuant to MCR 7.312(H) to file an *amicus curiae* brief in the above-captioned cases. In support of this motion, Proposed *Amici* state as follows:

1. On September 19, 2025, in MSC No. 168355, this Court granted Appellants Bay Mills Indian Community, Little Traverse Bay Bands of Odawa Indians, Grand Traverse Band of Ottawa and Chippewa Indians, Nottawaseppi Huron Band of the Potawatomi, Environmental Law & Policy Center, Michigan Climate Action Network (collectively, the "Joint Appellants") leave to appeal the February 19, 2025 decision of the Michigan Court of Appeals, *In re Enbridge Energy, Limited P'ship to Replace and Relocate Line 5*, __ Mich App __; __ NW2d __ (Feb 19, 2025) ("COA Decision"). That same day, in MSC No. 168346, this Court also granted Appellant For Love of Water leave to appeal the COA Decision.

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2. In both cases, this Court will address issues pertaining to the Michigan Public Service Commission's ("PSC") obligations in administrative proceedings under the Michigan Environmental Protection Act, MCL 324.1701 *et seq.* ("MEPA").

3. Proposed *Amici* represent industry leaders responsible for providing reliable, safe, and cost-effective electricity and natural gas service to Michigan residents:

International Transmission Company, d/b/a ITC*Transmission* ("ITCT"), and **Michigan Electric Transmission Company, LLC** ("METC"), are subsidiaries of ITC Holdings Corp., the nation's largest independent electric transmission company, operating and maintaining high-voltage transmission infrastructure in eight states. ITCT and METC are engaged in the Federal Energy Regulatory Commission ("FERC") jurisdictional transmission of electricity throughout a majority portion of the Lower Peninsula. ITCT operates approximately 3,200 miles of transmission infrastructure in southeast Michigan, while METC operates approximately 5,900 miles of transmission lines in the western and northern portions of the Lower Peninsula. Although the PSC does not regulate transmission rates or terms and conditions of service, ITCT and METC are required by Act 30 of 1995 to seek siting approval from the PSC when Michigan needs certain new high-voltage transmission infrastructure. See MCL 460.561 *et seq.*

Consumers Energy Company ("Consumers Energy") is a combined electric and natural gas public utility serving customers throughout Michigan's Lower Peninsula. Consumers Energy owns, operates, and maintains one of the state's largest energy delivery systems, including nearly 100,000 miles of electric distribution lines and a natural gas system comprised of over 27,000 miles of gas distribution pipeline and nearly 2,500 miles of gas transmission pipeline. Much of this infrastructure—particularly the siting and construction of natural gas pipelines under

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Act 9 of 1929, MCL 483.101 *et seq*., and various electric facilities—is regulated and subject to siting approval by the PSC.

4. Proposed *Amici* are responsible for building and maintaining the infrastructure needed to provide essential services to the public. In certain instances—such as siting and constructing electric transmission lines, see MCL 460.561 *et seq*. ("Act 30"), and siting pipelines that carry and transport natural gas, see MCL 483.101 *et seq*. ("Act 9")—Proposed *Amici*'s conduct is subject to PSC review and approval.

5. Proposed *Amici* have a direct interest in the outcome of this case because this case touches on the interplay of the PSC's statutory authority to regulate certain energy infrastructure and the obligations imposed by MEPA.

6. This Court's decision in this case will have practical implications to Proposed *Amici*'s collective ability to construct and maintain the infrastructure needed to deliver safe, reliable, cost-effective, and timely energy service to Michigan residents and businesses. Proposed *Amici*'s brief is intended to inform the Court of those implications.

7. Proposed *Amici*'s brief is timely filed consistent with this Court's December 17, 2025 Order stating any briefs amicus curiae will be accepted as timely filed if submitted on or before January 23, 2026.

WHEREFORE, Proposed Amici respectfully request that this Court grant this motion for leave to file an *amicus curiae* brief and accept for filing their proposed brief attached as **Exhibit A** to this motion.

Dated: January 23, 2026

Respectfully submitted,

/s/ Richard J. Aaron

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BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF INTERNATIONAL TRANSMISSION COMPANY d/b/a ITC*TRANSMISSION*, MICHIGAN ELECTRIC TRANSMISSION COMPANY, LLC, AND CONSUMERS ENERGY COMPANY

For the reasons explained in the accompanying Motion for Leave to File an Amicus Curiae Brief, the Proposed *Amici* respectfully requests that this Court grant this motion for leave to file an amicus curiae brief, attached as **Exhibit A**.

Dated: January 23, 2026

Respectfully submitted,

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EXHIBIT A

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STATEMENT OF JURISDICTION

Amici Curiae[1], further identified below, accept the Statements of Jurisdiction as stated by Appellants Bay Mills Indian Community, Little Traverse Bay Bands of Odawa Indians, Grand Traverse Band of Ottawa and Chippewa Indians, Nottawaseppi Huron Band of the Potawatomi, Environmental Law & Policy Center, Michigan Climate Action Network (collectively, the "Joint Appellants"), and Appellant For Love of Water ("FLOW"), to which Petitioner-Appellee Enbridge Energy, Limited Partnership ("Enbridge") and Appellee Michigan Public Service Commission ("Commission" or "PSC") concurred. *Amici Curiae* submit this brief in accordance with MCR 7.312(H)(1).

[1] Pursuant to MCR 7.312(H)(5), *Amici* state that counsel for a party did not author this brief in whole or in part and no counsel or party other than *Amici* made a monetary contribution intended to fund the preparation or submission of this brief.

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STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. Whether the Court of Appeals correctly applied a deferential standard of review rather than determining de novo under MCL 324.1705(2) of the Michigan Environmental Protection Act ("MEPA"), MCL 324.1701 *et seq*., whether the Replacement Project will likely pollute, impair, or destroy the air, water, or state's other natural resources or the public trust in these resources in accordance with *West Michigan Environmental Action Council, Inc v Natural Resources Comm,* 405 Mich 741, 752-55 (1979).

Joint Appellants answer:	No.
The Court of Appeals answer:	Yes.
PSC answers:	Yes.
Enbridge answers:	Yes.
Amici Curiae answer:	Yes.

II. Whether the Court of Appeals properly affirmed the PSC's limitation on the scope of the evidence to be reviewed regarding its determinations to the "conduct" at issue under MCL 324.1705(2) of MEPA and upheld the PSC's decision to exclude evidence of the history and risk of oil spills along the entire length of Line 5 in those determinations.

Joint Appellants answer:	No.
The Court of Appeals answer:	Yes.
PSC answers:	Yes.
Enbridge answers:	Yes.
Amici Curiae answer:	Yes.

III. Whether, in enacting MCL 324.1705(2) of the MEPA, the Legislature required the PSC to comply with the common-law public-trust doctrine.

FLOW answers:	Yes.
The Court of Appeals answer:	Did not address.
PSC answers:	No.
Enbridge answers:	No.
Amici Curiae answer:	No.

IV. If not, whether the common-law, public trust doctrine nonetheless requires such compliance, see *Glass v Goeckel*, 473 Mich 667, 694-96 (2005).

FLOW answers:	Yes.
The Court of Appeals answer:	No.
PSC answers:	No.
Enbridge answers:	No.
Amici Curiae answer:	No.

V. If the PSC is required to comply with the common-law, public-trust doctrine, what a proper public trust analysis would entail in PSC proceedings.

See Argument Section IV.

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STATEMENT OF INTEREST

Amici Curiae represent industry leaders responsible for providing reliable, safe, and cost-effective electricity and natural gas service to Michigan residents. *Amici* build and maintain the infrastructure needed to provide that service to the public. In certain instances—such as siting and constructing electric transmission lines, see MCL 460.561 *et seq*. ("Act 30"), and siting pipelines that carry and transport natural gas, see MCL 483.101 *et seq*. ("Act 9")—*Amici*'s conduct is subject to PSC review and approval. When *Amici* submit applications to the PSC, the public is afforded an opportunity to raise environmental concerns through proper intervention under Section 1705 of the Michigan Environmental Protection Act, MCL 324.1701 *et seq*. ("MEPA"). Because this case touches on the interplay of the PSC's statutory authority to regulate energy infrastructure and the obligations imposed by MEPA, *Amici* have a direct interest in the outcome of this case. *Amici* do not seek to repeat the arguments already presented by the parties. Instead, they submit this brief to address the broader, practical implications of this case to *Amici's* collective ability to construct and maintain the infrastructure needed to deliver safe, reliable, cost-effective, and timely energy service to Michigan residents.

International Transmission Company, d/b/a ITC*Transmission* ("ITCT"), and **Michigan Electric Transmission Company, LLC** ("METC"), are subsidiaries of ITC Holdings Corp., the nation's largest independent electric transmission company, operating and maintaining high-voltage transmission infrastructure in eight states. ITCT and METC are engaged in the Federal Energy Regulatory Commission ("FERC") jurisdictional transmission of electricity throughout a majority portion of the Lower Peninsula. ITCT operates approximately 3,200 miles of transmission infrastructure in southeast Michigan, while METC operates approximately 5,900 miles of transmission lines in the western and northern portions of the Lower Peninsula.

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Although the PSC does not regulate transmission rates or terms and conditions of service, ITCT and METC are required by Act 30 of 1995 to seek siting approval from the PSC when Michigan needs certain new high-voltage transmission infrastructure. See MCL 460.561 *et seq*.

Consumers Energy Company ("Consumers Energy") is a combined electric and natural gas public utility serving customers throughout Michigan's Lower Peninsula. Consumers Energy owns, operates, and maintains one of the state's largest energy delivery systems, including nearly 100,000 miles of electric distribution lines and a natural gas system comprised of over 27,000 miles of gas distribution pipeline and nearly 2,500 miles of gas transmission pipeline. Much of this infrastructure—particularly the siting and construction of natural gas pipelines under Act 9 of 1929, MCL 483.101 *et seq*., and various electric facilities—is regulated and subject to siting approval by the PSC.

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INTRODUCTION

The issues in this case extend well beyond the approval of a single pipeline project. At its core, this case concerns the proper scope of MEPA's Section 1705 and the role it plays in the broader statutory scheme regulating energy infrastructure administered by the PSC. Utilities like *Amici* are tasked with operating that infrastructure and routinely undertake construction to maintain, replace, or expand transmission lines, pipelines, and associated facilities. These activities are initiated to meet customer demand, address system reliability, and respond to emergent conditions. In many instances, new or expanded infrastructure is urgently needed to preserve reliable service. The ability of utilities to meet demands and expectations inherently depends on an efficient and predictable regulatory scheme—one in which agency review is thorough, but approvals are timely. How MEPA's environmental review is integrated into those processes therefore affects not only individual projects, but the State's ability to ensure reliable electric and natural gas service for Michigan residents.

This Court must recognize the competing interests at issue: the public's interest in protecting Michigan's natural resources with the equally compelling public interest in maintaining and expanding the energy infrastructure that supports modern life. Through MEPA, the Legislature struck the appropriate balance by requiring environmental review prior to agency authorization of conduct, while expressly providing that such review "is supplementary" to the agency's governing statutes. See MCL 324.1706. Here, the PSC adhered to that directive by limiting the scope of its review to the Replacement Project,[2] which is the conduct within the scope

[2] *Amici* refers to "the Replacement Project" as identified by Enbridge, which it describes as replacing an approximately four-mile-long segment of Line 5 from the bed of the Straits of Mackinac into an underground tunnel. *Petitioner-Appellee Enbridge Energy, Limited Partnership's Brief on Appeal* ("Enbridge Brief") at xi.

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of its authorizing statute, Act 16 of 1929, MCL 483.1 *et seq.* ("Act 16"). The Court of Appeals then appropriately deferred to the PSC's administrative expertise and affirmed its approval of the Replacement Project. From initial application through appellate review, MEPA functioned as intended and its goal of promoting statewide environmental stewardship was fulfilled.

Joint Appellants and FLOW ask this Court to fundamentally alter the regulatory balance required by the Legislature and to expand the PSC's authority beyond that authorized by statute. Their proposed interpretations would transform Section 1705 into a mechanism for expansive environmental review of entire infrastructure systems or projects, irrespective of agency authority and the practical realities of providing essential services. This Court should decline that invitation, and instead uphold the balance established by the Legislature—one that provides a clear and efficient path towards regulatory approval, while ensuring that authorized construction and operation occur in an environmentally responsible manner—and affirm.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amici adopt the relevant facts and procedural history set forth by the Court of Appeals, and as recited by the PSC and Enbridge in their respective briefs. See *Brief on Appeal of Appellee Michigan Public Service Commission*, at 2-20 ("PSC Brief"); Enbridge Brief at 4-15.

ARGUMENT

I. STANDARD OF REVIEW

Amici adopt the standard of review stated by the PSC and Enbridge. PSC Brief at 20-22; Enbridge Brief at 16.

II. THE COURT OF APPEALS PROPERLY DEFERRED TO THE PSC'S SECTION 1705 DETERMINATION.

The Court of Appeals correctly recognized that it must "give[ ] deference to the PSC's administrative expertise and is not to substitute its judgment for that of the PSC." *In re Enbridge*

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Energy, Limited P'ship to Replace and Relocate Line 5, __ Mich App __; __ NW2d __ (Feb 19, 2025) at 18 ("COA Op") (citing *Attorney General v Pub Serv Comm No 2*, 237 Mich App 82, 88; 602 NW2d 225 (1999)). MEPA does not modify or eliminate that deference but expressly fits within the existing administrative scheme. MCL 324.1706. *Amici* concur with the PSC and Enbridge that Joint Appellants misread Section 1705 and add new meaning to its plain language to support their position that the Court of Appeals should have reviewed the PSC's MEPA findings *de novo*. *Amici* write further to highlight and address why the PSC's expertise is critical to providing essential services.

Michigan's regulatory structure relies heavily on the subject matter expertise of administrative agencies. The need for this expertise does not go away simply because environmental allegations are raised. Indeed, the Michigan Constitution enshrines *both* the role of administrative agencies in state governance, Const 1963, art 6, § 28, and the State's commitment to the conservation and development of its natural resources, Const 1963, art 4, § 52.

The energy industry is complex, particularly when constructing new infrastructure, because regulators and utilities must often choose between project-related impacts instead of avoiding impacts altogether. This Court has repeatedly recognized that "virtually all human activities can be found to adversely impact natural resources in some way or other." *West Mich Environmental Action Council, Inc v Natural Resource Comm*, 405 Mich 741, 760; 275 NW2d 538 (1979) ("*WMEAC*"). Thus, the potential impacts of new energy infrastructure such as high-voltage transmission lines and pipelines must be weighed against the very real need to transport electricity, petroleum or natural gas throughout the State to the homes and businesses of Michigan. As the PSC puts it, "[a]gencies like the Commission were created to handle exactly those types of technical issues." PSC Brief at 48. Courts were not.

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Michigan law has long protected that expertise: "[c]onstitutionally and statutorily, these administrative fact finding exercises are entitled to a degree of deference defined by statute and our constitution." *SBC Mich v PSC (In re Complaint of Rovas)*, 482 Mich 90, 99; 754 NW2d 259 (2008); see also *Clam Lake Twp v Dep't of Licensing & Regulatory Affairs*, 500 Mich 362, 372; 902 NW2d 293, 299 (2017) (Courts must "remain[ ] sensitive to the deference owed to administrative expertise and not invading exclusive administrative fact-finding."). Unless otherwise explicitly modified by statute, see MCL 24.302, administrative agencies are entitled to deference to questions of fact in their area of specialized knowledge and expertise in industries where courts may lack familiarity. As this case highlights, the record of a contested case proceeding can be astronomical and include hundreds, if not thousands, of pages of written testimony, exhibits, and transcripts developed by expert witnesses that have intimate knowledge of the subject matter and relevant facts. The PSC's expertise allows it to address complex issues within that realm efficiently and effectively.

Nothing in MEPA alters or diminishes this foundational principle. To the contrary, MEPA expressly provides that it "is *supplementary* to existing administrative and regulatory procedures provided by law." MCL 324.1706 (emphasis added). By its plain language, MEPA operates alongside—and not in derogation of—established administrative processes and standards of review. See *City of Coldwater v Consumers Energy Co*, 500 Mich 158, 167; 895 NW2d 154 (2017) ("If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written.") It does not contemplate courts displacing agency expertise, retrying factual disputes, or substituting judicial preferences for agency determinations grounded in the evidentiary record.

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The Legislature's direction could not be clearer. MEPA preserves the existing balance between agencies and courts and that "must be enforced as written." *Id.* Any interpretation that expands judicial review beyond the plain language erodes deference to administrative fact-finding and would undermine Michigan's carefully constructed regulatory framework and contravene both statutory text and longstanding precedent.

III. MEPA REQUIRES A NARROW REVIEW OF THE CONDUCT AT ISSUE AND WITHIN THE PSC'S STATUTORY AUTHORITY.

Amici agree with the Court of Appeals, the PSC, and Enbridge: MEPA requires an agency to look to "the 'conduct' sought to be 'authorized or approved'" when assessing environmental effects as well as feasible and prudent alternatives, nothing more. MCL 324.1705(2); see also, COA Op at 24; *Buggs v Pub Serv Comm'n*, unpublished opinion per curiam of the Court of Appeals, issued January 13, 2015 (Docket Nos. 315058 and 315064)[3] (applying MEPA to the conduct at issue under Act 9). This is required by Michigan law. Any authority possessed by an administrative agency must be plainly granted by the Legislature—"doubtful power does not exist." *In re Procedure and Format for Filing Tariffs under the Mich Telecommunications Act*, 210 Mich App 533, 539; 534 NW2d 194 (1995) (citing *Mason Co Civic Research Council v Mason Co*, 343 Mich 313, 326-27; 72 NW2d 292 (1955)). And MEPA does not grant the PSC authority to consider anything more than the conduct that is within its authorizing statute.

The Legislature clearly determined that MEPA is to serve a supplementary role to an agency's proceedings. MCL 324.1706. Reading the plain language, Section 1705 is designed to integrate environmental considerations into existing regulatory proceedings and decisions, not to create a tool for global or statewide environmental review of entire systems or projects, which, as

[3] Attachment 1.

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the PSC points out, was the goal of Joint Appellants. PSC Brief at 54-57. An environmental review as expansive as that demanded by Joint Appellants is not justified nor practical when the reviewing agency's statutory mandates limit its ability to act. *Union Carbide Corp v Pub Serv Com*, 431 Mich 135, 146; 428 NW2d 322 (1988).

The risk of intervenors demanding system-wide environmental review is not unique to this case, but is a risk in all administrative proceedings. See MCL 324.1705(1) (granting intervention as of right to members of the public). To illustrate how it may play out in other situations, *Amici* point to Act 30 proceedings, which govern siting and construction of major transmission lines. MCL 460.565. The electric grid is interconnected; power dispatch and system operations are influenced by a variety of actors, transmission operators, public utilities, and third-party market operators. A new transmission line may be constructed to accommodate a surge of new resources or new customers. In an Act 30 proceeding, an intervenor may seek to raise the downstream environmental effects of those new resources or customers, regardless of whether the PSC or the applicant has any control of the resources or customers. And permitting this type of allegation would burden the PSC, its Staff, and the applicant, by flooding an evidentiary record with information that does not ultimately help the PSC make its decision consistent with its legally authorizing statute.

To maintain administrative efficiency, the Legislature saw fit to limit MEPA to the conduct to be approved or authorized by the PSC and ensure that environmental review is supplementary to the administrative proceeding. In this instance, the PSC got it right by limiting the record to the Replacement Project and the Court of Appeals correctly agreed.

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IV. THE PSC IS ONLY REQUIRED TO APPLY THE PUBLIC TRUST DOCTRINE TO THE EXTENT IT IS INCORPORATED INTO MEPA.

This Court's precedent makes clear that "[t]he MPSC has no common-law powers; it has only the authority granted to it by the Legislature." *Ass'n of Bus Advocating Tariff Equity v Consumers Energy Co*, 505 Mich 97, 119; 949 NW2d 73 (2020); *Huron Portland Cement Co v Mich Pub Serv Com*, 351 Mich 255, 262; 88 NW2d 492 (1958). As such, the PSC must root its power in statutory enactments, not the common law. See *Union Carbide Corp*, 431 Mich at 146.

With respect to the public-trust doctrine, *Amici* agree with the Court of Appeals, the PSC, and Enbridge that the PSC can and should consider the public trust in natural resources but only to the extent the doctrine is incorporated in MEPA's plain language. COA Op at 22. As written, MEPA positions the public trust doctrine as another "trigger" to the second step of the Section 1705 analysis: whether "there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare." MCL 324.1705(2). Whether there is "pollution, impairment, or destruction" to natural resources or a threat to the public's trust in those resources, the analysis is the same.

Rather than restate these arguments in their entirety, *Amici* highlight the consequences of adopting FLOW's arguments given its application of the public trust doctrine to the Replacement Project. As applied, FLOW claims the Michigan Department of Environmental, Great Lakes, and Energy ("EGLE") is the *only* agency that can make a public trust determination regarding the bottomlands of the Great Lakes. *Appellant For Love Of Water's Brief on Appeal* at 42-44 ("FLOW Brief"). And since that determination must be made before conduct is approved or authorized, see MCL 324.1705(2), the PSC could not approve the Replacement Project until EGLE made the requisite public trust determination. When applied to all PSC proceedings, however, FLOW's public trust analysis would give EGLE or another agency veto power over the PSC's

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exclusive authority to regulate infrastructure under various statutes, including Act 16, Act 30, and Act 9. That is clearly not what the Legislature intended.

FLOW's public trust analysis is based on a flawed understanding that an administrative agency's MEPA compliance under Section 1705 is analogous to the determination made by courts under Section 1701. FLOW Brief at 33. In a Section 1701 direct action, courts may consider "a standard for pollution or for an antipollution device or procedure" passed by the state or an agency if the court determines it is appropriate to do so. MCL 324.1701(2). Because the Section 1701 determination is the same as that under Section 1705, FLOW states "[n]o reason exists why" a court reviewing an agency order would not follow the same approach. FLOW Brief at 35. Applying its framework to the Replacement Project, FLOW states the applicable "standard[s] for pollution" are those enacted pursuant to the Great Lakes Submerged Lands Act, MCL 324.32501 *et seq*. ("GLSLA"). See also Mich Admin Code, R 322.1015. Because EGLE is tasked with administering the GLSLA and accompanying rules, EGLE is the only agency that can render a public trust determination under MEPA. See FLOW Brief at 48. And (for some unknown reason) it must do so *before* the PSC approves the Replacement Project under Act 16.[4] *Id.* FLOW's public trust analysis is both legally unsound and, if applied to all PSC-contexts, would be unworkable under existing statutory schemes.

As an initial matter, there is no indication that the Legislature intended decisionmakers under Section 1705 to apply the approach available to decisionmakers under Section 1701 and look outside the agency's own statutory directives for pollution standards. If it did, Section 1705 would include that same language from Section 1701(2). A court "cannot read into a statute

[4] Enbridge aptly points out that it cannot begin work until it receives all necessary permits and authorization, including approvals from EGLE. Enbridge Brief at 51-52.

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language that was not placed there by the Legislature." *Risk v Lincoln Charter Twp Bd of Trustees*, 279 Mich App 389, 399; 760 NW2d 510 (2008) (citing *AFSCME v City of Detroit*, 468 Mich 388, 412; 662 NW2d 695 (2003)). Yet, that is exactly what FLOW asks this Court to do when arguing that Section 1701(2)'s approach can be used in Section 1705 MEPA compliance.

More significantly, MEPA should not be construed in a manner that shifts necessity determinations explicitly granted to the PSC to EGLE or another agency. The PSC has exclusive "power to control and regulate corporations, associations and persons engaged, directly or indirectly, in the business of purchasing or selling or transporting natural gas for public use," MCL 483.103, and to regulate the location and construction of high-voltage transmission lines, MCL 460.565, 460.570. Both functions are at the center of providing reliable, safe, and cost-effective electric and natural gas services to Michigan residents

Applying FLOW's public trust analysis to the electric contexts highlights why its approach is not practical across the industry to other essential services regulated by the PSC. The PSC's determination of necessity for high voltage transmission lines, for example, "shall take precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibits or regulates the location and construction of a transmission line[.]" MCL 460.570(1). That determination is also binding on courts in condemnation proceedings where private land is required to construct the PSC approved transmission line. MCL 213.56(3). Indeed, Act 30 was crafted by the Legislature to address a need for comprehensive transmission line siting and ensure that when the need for new infrastructure arises, service providers have a clear path to siting authority.

Under FLOW's analysis, should a transmission line—subject to the exclusive siting authority of the PSC—traverse the Great Lakes bottomlands or any resource in which EGLE has

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enacted a "standard of pollution," then MEPA would create a situation where EGLE could be in direct conflict with the PSC's necessity determination should they reach different conclusions. Allowing MEPA to, through an expansive understanding of the public trust doctrine, operate in this manner introduces duplicative and potentially conflicting decision-making, and reinserts the very uncertainty and delay that comprehensive siting statutes were enacted to eliminate. Utilities' ability to respond to growing energy demands and ensure reliable service depends on having clear, efficient paths to regulatory determination regarding whether infrastructure is needed and should be built.

FLOW's approach is unworkable and should be rejected as the public trust analysis for all PSC applications. At the very least, to the extent the Court finds value in FLOW's argument, the Court should explicitly limit EGLE's administration of the GLSLA to this case and the Replacement Project.

CONCLUSION

The Court of Appeals correctly affirmed the PSC's order and there is no basis to disturb that decision. MEPA's Section 1705 operates as a supplementary safeguard—not an independent grant of authority to expand agency jurisdiction or impose unlimited environmental review regardless of statutory text. The PSC properly applied that framework, balancing environmental protection with its duty to ensure safe, reliable, and timely energy service for Michigan residents.

Dated: January 23, 2026

Respectfully submitted,

/s/ Richard J. Aaron

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in MCR 7.212(B) and MCR 7.312(A). I am relying on the word count of the word-processing system used to produce this document. This brief uses a 12-point proportional font (Times New Roman) and the word count for this brief is 3,378 words.

Dated: January 23, 2026

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Attachment 1

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Buggs v. Mich. PSC

Court of Appeals of Michigan

January 13, 2015, Decided

No. 315058, No. 315064

Reporter
2015 Mich. App. LEXIS 23 *

JOHN BUGGS and DANIEL BONAMIE, Appellants, v MICHIGAN PUBLIC SERVICE COMMISSION, Appellee, and DTE MICHIGAN GATHERING HOLDING COMPANY, assignee of ENCANA OIL & GAS (USA), INC., Petitioner-Appellee.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Subsequent History: Decision reached on appeal by Buggs v. Mich. Pub. Serv. Comm'n (In re Application of Encana Oil & Gas Re Garfield 36 Pipeline), 2017 Mich. App. LEXIS 801 (Mich. Ct. App., May 16, 2017)

Related proceeding at Buggs v. Dep't of Natural Res., 2017 Mich. App. LEXIS 800 (Mich. Ct. App., May 16, 2017)

Prior History: [*1] Public Service Commission. LC No. 00-017195. Public Service Commission. LC No. 00-017196.

Counsel: FOR JOHN BUGGS, APPELLANT: ELLIS BOAL, CHARLEVOIX, MI.

FOR DTE MICHIGAN GATHERING HOLDING COMPANY, PLAINTIFF-APPELLEE: WILLIAM A HORN, GRAND RAPIDS, MI.

Judges: Before: M. J. KELLY, P.J., and CAVANAGH and METER, JJ.

Opinion

PER CURIAM.

In this dispute over the construction and use of gas pipelines, appellants, John Buggs and Daniel Bonamie, appeal by right the ex parte orders issued by appellee, Michigan Public Service Commission, which gave petitioner, DTE Michigan Gathering Holding Company, as the successor in interest to Encana Oil & Gas (USA), Inc. (Encana Oil),[1] permission to construct, own, and operate two natural gas pipelines: the Garfield 36 Pipeline (Docket No. 315058) and the Beaver Creek 11 Pipeline (Docket No. 315064). For the reasons more fully explained below, we conclude that the Commission's orders were unlawful. Accordingly, we vacate those orders and remand for a new determination of necessity on each application.

I. BASIC FACTS

1. THE GARFIELD 36 PIPELINE

In January 2013, Encana Oil applied for a certificate of public convenience and approval to construct, own, and operate a 1.9 mile long natural gas pipeline under 1929 PA 9 (Act 9), MCL 483.101 *et seq*. Encana Oil referred to the pipeline as the Garfield 36 Pipeline. Encana Oil represented it would use the pipeline to transport gas recovered from a single well with a recoverable reserve of 2 to 3 billion standard cubic feet of gas. However, it also stated that it anticipated drilling additional wells into the Collingwood formation. It stated that the pipeline would be constructed with anticipated easements

[1] During the pendency of this appeal, Encana Oil moved to substitute DTE Holding as the party in interest after it assigned all of its interests in the pipelines to DTE Holding. This Court granted the motion. However, because all proceedings below occurred while Encana Oil was still a party, for ease of reference we shall refer to Encana **[*2]** Oil, rather than its successor, DTE Holding.

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and permits "adjacent to the well pad access road" on land owned by the Michigan Department of Natural Resources (the Department) and within the county's right of way to the point where it would connect with Michigan Consolidated Gas Company's Saginaw Bay Pipeline. Encana Oil provided a map of the proposed route and engineering specifications which provided that the pipeline would be capable of transporting up to 40 million standard cubic feet of gas per day. Encana Oil further represented that the pipeline was necessary for **[*3]** its business, that the gas would ultimately be available to Michigan consumers, that without the pipeline there would be no public access to gas reserves in that area, and that the pipeline was "the most efficient and cost-effective means to bring these gas reserves to the public."

Encana Oil also filed an environmental impact assessment with its application. Dean Farrier prepared the assessment and stated that he was a consulting biologist. He represented that the proposed pipeline would be constructed entirely on land owned by the Department and along existing corridors such that there would be "minimal impact to the local ecosystems and land use," and that no alternatives reviewed had less impact. He noted that the route crossed some wetlands and that the pipeline would "be directionally drilled under the series of wetlands for 1027 feet" to "minimize the impact to that feature." He represented that the wetland crossing was exempt from the Natural Resources and Environmental Protection Act, MCL 324.101 *et seq*. Farrier also indicated that clearing would be limited to "the minimum area required for safe and efficient construction," and that to the best of his knowledge there were no threatened **[*4]** or endangered species within the proposed easement or along the proposed route. Finally, he represented that underground pipelines were the safest way to transport petroleum products, and that the potential for release was low and, in any event, unlikely to "significantly harm surrounding plants, wildlife, or soils." Further, although the possibility of ignition and fire was a danger, the human population density in the vicinity was "extremely low."

The Commission approved the proposed pipeline project in an ex parte order issued later that same month.

2. BEAVER CREEK 11 PIPELINE

In January 2013, Encana Oil also filed an application for approval and a certificate of public convenience and necessity to construct, own, and operate a 3.1 mile long natural gas pipeline that it referred to as the Beaver Creek 11 Pipeline, which was also to collect gas from the Collingwood formation and connect to Michigan Consolidated Gas Company's Saginaw Bay Pipeline over land belonging to the Department. The pipeline was to service a single well with 2 to 3 billion standard cubic feet of gas but, again, Encana Oil anticipated that it would add "a significant number of wells" in the future. It also again **[*5]** represented that the pipeline was necessary for its business, that without it the public would not have access to gas reserves in the area, and that it was the most efficient and cost-effective means of delivering the gas.

Farrier prepared an environmental impact assessment for this project as well. Farrier again stated that the route was along existing corridors on the Department's land except for a small percentage of the route, which was on land owned by the Department of Transportation; however, he acknowledged that the route crossed privately-owned land and that there were five residences within 1/8th of a mile, but that the route was within the county right-of-way. Again, he represented that to the best of his knowledge there were no threatened or endangered species within the proposed easement or route and that "[c]learing, removal of topsoil, and grading will be limited to the minimum area required for safe and efficient construction." He also said the route "offers the minimal impact to the local ecosystems and land use," and that "[a]lternatives were reviewed and none appeared to have less impact . . . ." As with the other assessment, he asserted that underground pipelines were the safest way to **[*6]** transport petroleum products, that the potential for release was low and unlikely to "significantly harm surrounding plants, wildlife or soils," and that although the possibility of ignition and fire was a danger, the human population density in the

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vicinity was "extremely low."

The Commission approved the project in an ex parte order issued in January 2013.

The parties do not dispute that both pipelines have since been constructed and have begun transporting gas.

3. PROCEEDINGS

In March 2013, Buggs and Bonamie applied for permission to intervene in both of Encana Oil's applications. Specifically, they asked the Commission to consolidate the proceedings, vacate its previous orders, and hold a hearing to receive additional evidence.

That same month Buggs and Bonamie appealed in this Court and moved to hold the appeals in abeyance pending a decision by the Commission on whether to allow additional evidence. This Court issued an order consolidating the appeals and issued an order staying appellate proceedings and holding the appeals in abeyance until the Commission "disposes of the petition to receive additional evidence and, if additional evidence is received, issues a final order after consideration **[*7]** of the additional evidence."[2]

In April 2013, the Commission denied the petitions to intervene by Buggs and Bonamie on the ground that they were not proper intervenors:

> Mere interest in a proceeding's outcome is insufficient to support intervention. The Commission has long held that prospective intervenors must generally satisfy the two-prong test established in *Association of Data Processing Services Organizations, Inc v Camp*, 397 U.S. 150; 90 S Ct 827; 25 L Ed 2d 184 (1970) . . . . This test requires the party in question to show: (1) that it suffered an injury in fact and (2) that the interest allegedly damaged falls within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.
>
> . . . Petitioners have failed to satisfy either criterion. Specifically, Petitioners' allegation that protected wildlife and the environment may be harmed as the result of future drilling does not establish that Petitioners have suffered any concrete **[*8]** or discernible injury in fact. In addition, Petitioners' allegations that the plans interfere with their or the public's future use and enjoyment of the area likewise fail to establish that they suffered an injury in fact or that the "damaged interest" falls within the zone of interests Act 9 was designed to protect or regulate.

The Commission later denied Buggs and Bonamie's motion for reconsideration. In denying reconsideration, the Commission rejected the contention by Buggs and Bonamie that it had an obligation to consider the environmental impact of the proposed pipelines:

> [D]espite the Petitioners' assertion that modern law has "overtaken" Act 9, the Commission is required to apply the law as written. Amendments or additions to the Act must come from the Legislature. The Commission lacks the authority to amend the Act or to expand its reach simply because the Petitioners ask it to. Similarly, contrary to the Petitioners' argument that the Michigan Environmental Protection Act "imposes a duty on the state and on agencies like this commission to consider the likely environmental effects of the proposed conduct," the Commission lacks statutory authority to enforce that law or other environmental **[*9]** laws. Further, the Petitioners have failed to identify any specific duties that the law imposes on the Commission.
>
> The Petitioners also argue that the Commission Staff's (Staff) failure to investigate Encana [Oil]'s environmental impact assessment (EIA), as compared to the Staff's independent environmental review in Case No. U-9138, warrants reconsideration and approval

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[2] See *In re Application of Encana Oil & Gas Inc re Garfield 36 Pipeline*, unpublished order of the Court of Appeals, entered March 25, 2013 (Docket Nos. 315058, 315064); *In re Application of Encana Oil & Gas Inc re Garfield 36 Pipeline*, unpublished order of the Court of Appeals, entered April 3, 2013 (Docket Nos. 315058, 315064).

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of the petition. Having reviewed the matter, we conclude that there was no legal error or other basis to warrant reversal of our initial decision denying the Petitioners intervention.

Although the Petitioners are correct that, in Case No. U-9138, the Staff conducted its own environmental review in order to conclude that construction would not constitute a "major site activity," that case has no bearing on the matter presently before the Commission. Moreover, the Petitioners cite no legal authority to support their assertion that, because the Staff conducted an independent review of an issue in one Act 9 pipeline case, it must do so in each case. The criteria that the Commission is statutorily authorized to consider in an Act 9 pipeline construction application includes the map of the proposed line, the route, the type **[*10]** of construction and the necessity and practicability of the pipeline so that the Commission may determine whether the proposed construction serves the convenience and necessity of the public. MCL 483.109.
Here, the Petitioners have chosen the wrong forum in which to bring their claims. If they want to protect the natural habitats of the Kirtland's warbler or other wildlife from diminution, or protect the environment from forest fragmentation, they need to file a lawsuit in a court with proper jurisdiction to consider the issues. The Commission is unable to grant the Petitioners' motion for reconsideration because they have chosen the wrong forum in which to seek redress.

In August 2013, Encana Oil moved to dismiss the appeal by Buggs and Bonamie for lack of jurisdiction. A majority of this Court denied the motion because Encana Oil failed to establish that the Court of Appeals lacked jurisdiction:

> Petitioner's argument that appellants are not parties in interest within the meaning of MCL 462.26 because they were not parties to the . . . [administrative] proceedings must be rejected because, by equating the phrase "party in interest" used in that statutory provision with the term "party," petitioner would **[*11]** improperly render the words "in interest" nugatory or mere surplusage. See, e.g., *Whitman v City of Burton*, 493 Mich 303, 311-312; 831 N.W.2d 223 (2013). Rather, by using the broader phrase "party in interest," the Legislature has necessarily allowed persons or entities who are not parties to the relevant [Commission] case to file an appeal of right from the relevant types of [Commission] orders. Further, contrary to petitioner's argument that one needs to be a party to a case to be an aggrieved party under MCR 7.203(A), there are situations where a non-party to a case is an aggrieved party with standing to appeal. See *Abel v Grossman Investments Co*, [302 Mich App 232; 838 NW2d 204 (2013)]. Also, *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286; 715 NW2d 846 (2006), is inapplicable. Contrary to petitioner's discussion of that case, its holding was not based on the Attorney General not being a named party. See *id.*, 296 n 10. Rather, the Attorney General was manifestly not an aggrieved party in that case because he was not pursuing an appeal based on an interest in the outcome of the particular case but merely to dispute this Court's construction of a statute. See *id.*, 290. Thus, we need not consider whether *Federated Ins Co* has been undermined by *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010). However, we note that review of the June 28, 2013 . . . order is not in the scope of the present appeals from January 31, 2013 orders of the [Commission]. **[*12]** Rather, appellants may only challenge the January 31, 2013 [Commission] orders . . . .[3]

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[3] *In re Application of Encana Oil & Gas Inc re Garfield 36 Pipeline*, unpublished order of the Court of Appeals, entered September 25, 2013 (Docket Nos. 315058 & 315064). Although Buggs and Bonamie have restricted the issues presented on appeal to those involved in the January 2013 order, they have referred to and incorporated pleadings and documents from subsequent proceedings; they refer to affidavits, pleadings, and documents to establish that they live in the area, were not given notice of the applications, and understand that Encana Oil (or DTE Holding) plans to add 500 to 1,700 wells and associated pipelines to the system. Buggs and Bonamie also state their belief that the gas exploration

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We now consider the issues on appeal.

II. THE ORDERS

A. STANDARDS OF REVIEW

Buggs and Bonamie argue that the Commission erred when it issued the orders approving the pipelines without following the requirements stated under Act 9. Specifically, they maintain that, under Michigan's Environmental Protection Act (MEPA), MCL 324.1701 *et seq*., the Commission had to conduct an environmental review before making its decision concerning the convenience and necessity of the proposed pipelines, which it did not do. Moreover, they argue, Encana Oil's environmental assessments did not provide a sufficient basis for evaluating the environmental impact. Given these defects, Buggs and Bonamie argue that the Commission should have rejected the applications.

Buggs and Bonamie were not parties to the proceedings below and, for that reason, were not able to raise these issues before the Commission before it issued its orders. Thus, this issue was not properly preserved for review. Nevertheless, this Court has the discretion to consider the issue for the first time on appeal. *Bailey v Schaaf (On Remand)*, 304 Mich App 324, 345; 852 NW2d 180 (2014). And, because this claim of **[*14]** error concerns a question of law and all the facts necessary for our review have been presented by the parties, and because the failure to consider the claim may result in a miscarriage of justice, we elect to exercise our discretion to consider the issue. See *Autodie, LLC v City of Grand Rapids*, 305 Mich App 423, 431; 852 NW2d 650 (2014).

In order to prevail, Buggs and Bonamie must demonstrate by clear and convincing evidence that the Commission's orders were unlawful or unreasonable. MCL 462.26(8). An order is unlawful if the Commission failed to follow a statutory requirement or abused its discretion. *In re Application of Consumers Energy Co for Rate Increase*, 291 Mich App 106, 109-110; 804 NW2d 574 (2010). The Commission's orders must be authorized by law and supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28. This Court reviews de novo whether the Commission exceeded the scope of its authority. *In re Application of Consumers Energy Co*, 291 Mich App at 110. This Court also reviews de novo the proper interpretation of statutes. *Huntington Nat'l Bank v Daniel J Aronoff Living Trust*, 305 Mich App 496, 507; 853 NW2d 481 (2014).

B. ANALYSIS

The Commission is a "creature of the Legislature" possessing only the "authority bestowed upon it by statute"; it "possesses no 'common law' powers." *Union Carbide Corp v Pub Serv Comm*, 431 Mich 135, 146; 428 NW2d 322 (1988). "Thus, a determination of the commission's powers requires an examination of the various statutory enactments pertaining to its authority." *Id*.

The Legislature vested the Commission with the power to control and regulate **[*15]** "corporations, associations and persons engaged, directly or indirectly, in the business of purchasing or selling or transporting natural gas for public use" under Act 9. MCL 483.103. The Commission is further required to "investigate any alleged neglect or violation of the laws of the state by any corporation, association or person purchasing or selling natural gas and transmitting or conveying the same by pipe line or lines for public use . . . ." *Id*.

Anyone proposing to pipe or transport natural gas in Michigan must comply with Act 9. MCL 483.101. Moreover, before constructing a pipeline to transport natural gas, the person proposing to construct the line must apply to the Commission for permission to construct the pipeline. MCL 483.109. The application must include "a map or plat of [the] proposed line or lines which it desires to construct, showing the dimensions and character of such

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and development activity can have an extreme effect on the landscape, that the habitat of the Kirtland Warbler will be adversely affected, and relate accounts of dead birds. Because these issues were not before the Commission when it issued its orders, we will not consider them in determining whether the Commission erred when it issued those orders. Nonetheless, the Commission's decision on reconsideration of **[*13]** the denial of the motion to intervene is pertinent to understanding the basis of its refusal to allow intervention.

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proposed pipe line or lines, its compression stations, control valves, and connections . . . ." *Id*. And the Commission must "examine and inquire into the necessity and practicability of such transmission line or lines and to determine that such line or lines will when constructed and in operation serve the convenience and necessities **[*16]** of the public" before it may approve the construction of the proposed pipeline. MCL 483.109. Thus, although MCL 483.109 does not specifically require the Commission to consider the environmental impact, it plainly permits the Commission to deny permission if after investigating the matter the Commission determines that the new pipeline would not serve the public convenience and necessity.

Since the enactment of Act 9, our Supreme Court has considered whether an agency must consider the environmental impact of a proposed project before granting permission to proceed. In *State Hwy Comm v Vanderkloot*, 392 Mich 159, 167-168; 220 NW2d 416 (1974) (opinion by Williams, J.), landowners opposed the condemnation of land for a highway, arguing in part that it was a swamp area with "increasingly rare or even unique ecological characteristics," and that the duties of the highway commission conflicted with Const 1963, art 4, § 52, relating to the protection of natural resources. In considering this argument, our Supreme Court held that the Legislature has an affirmative duty to enact legislation to protect the environment, but was not required to fulfill this duty by enactment of a specific provision in the highway condemnation act, MCL 213.361 *et seq*., or every other piece of relevant legislation; instead, the Court explained, **[*17]** it had fulfilled its duty by enacting the environmental protection act.[4] *State Hwy Comm*, 392 Mich at 182-183 (opinion by Williams, J.), 194 (opinion by Levin, J.) (conceding that the environmental protection act provides substantive protections as well as procedural protections, but declining to consider the issue on the record before the Court). The Court explained that the Legislature accomplished this goal through two distinct methods: it provided a cause of action for the protection of Michigan's natural resources, and it provided that subject agencies had certain environmental obligations. *Id*. at 184. The Court determined that the environmental protection act specifically proscribed "pollution, impairment, or destruction" of natural resources "unless it is demonstrated that 'there is no feasible and prudent alternative to [the polluting, impairing, or destroying entity's] conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction," and that "[t]his substantive environmental guideline is applicable to the [highway] Commission's administrative condemnation determinations." **[*18]** *Id*. at 185-186 (emphasis removed), citing MCL 691.1203, which has been replaced by MCL 324.1703; see also *Genesco, Inc v Dep't of Environmental Quality*, 250 Mich App 45, 55-56; 645 NW2d 319 (2002). Thus, although the specific provision of the environmental protection act cited by the court addressed the burden of proof for the cause of action created by that act, a plurality of our Supreme Court held that the act also established a substantive standard prohibiting the impairment of natural resources, which applies to an agency's determinations. *State Hwy Comm*, 392 Mich at 186, 190 (opinion by Williams, J.). The Court, however, went on to state that the declaration of necessity in the condemnation proceeding would be *prima facie* evidence of necessity and that a person challenging the agency's determination of necessity would have the burden to prove fraud or abuse of discretion, but that the commission's failure to reasonably comply with its duties could be a basis for finding fraud or an abuse of discretion. *State Hwy Comm*, 392 Mich at 189-190 (opinion by Williams, J.).

Buggs and Bonamie argue the **[*19]** Commission did not perform the requisite Act 9 review because, in determining public necessity, it did not sufficiently consider the environmental effect of the pipelines. As noted above, in rejecting the motion

[4] The original environmental protection act was repealed by 1994 PA 451, and replaced by the Natural Resources and Environmental Protection Act, MCL 324.101 *et seq*., Part 17 of which is titled the Michigan Environmental Protection Act. The MEPA set forth in Part 17 is substantially similar to the original act.

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for reconsideration, the Commission stated that it had no obligation to consider the environment impact under MEPA, but instead stated that it was required to look to Act 9 alone:

> [C]ontrary to the Petitioners' argument that the Michigan Environmental Protection Act "imposes a duty on the state and on agencies like this commission to consider the likely environmental effects of the proposed conduct," the Commission lacks statutory authority to enforce that law or other environmental laws. Further, the Petitioners have failed to identify any specific duties that the law imposes on the Commission.

The Commission, however, mistakenly characterized the nature of the obligation. Buggs and Bonamie did not ask the Commission to enforce the MEPA or another environmental law. They asked the Commission to comply with its duty to examine and inquire into the necessity and practicability of the pipelines and determine that the pipelines would serve the convenience and necessity of the public. And, **[*20]** under the decision in *State Hwy Comm*, that duty includes an obligation to consider the environmental effect that the proposed pipeline would have. Namely, it had to consider whether the proposed project would impair the environment, whether there was a feasible and prudent alternative to the impairment, and whether the impairment was consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, or destruction. *State Hwy Comm*, 392 Mich at 185-186 (opinion by Williams, J.).

As required by Act 9 itself, Encana Oil submitted applications, maps of the proposed gas lines, and specifications for the projects as required by the statute. The Commission's orders make it clear that it reviewed these materials. Both applications, when coupled with the assessments, indicated that the pipelines were necessary for access to the gas reserves in the Collingwood formation and that the proposed routes were those causing the least impact. Thus, Encana Oil provided proof of necessity and practicability, and that there was no feasible and prudent alternative. However, although the Commission found in a cursory manner **[*21]** that the pipelines would serve the public convenience and necessity, it did not otherwise expressly speak to necessity, practicability, feasibility, or prudence in its orders. Moreover, it did not address whether any impairment was consistent with "the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction." *State Hwy Comm*, 392 Mich at 185 (opinion by Williams, J.). Thus, the Commission failed to follow the substantive requirement of MEPA, a statutory requirement independent of Act 9, and accordingly, its orders were unlawful.

Although MCL 324.1705(2) required a determination that took an environmental element into account, appellants incorrectly suggest that it required the Commission to conduct an independent investigation. There is no language in the statute to suggest that the Commission had any such duty. Moreover, *State Hwy Comm* indicated that the environmental effect of conduct had to be considered in making a determination, but it did not suggest that an agency had an independent duty to investigate. Thus, to the extent that the materials in Encana Oil's applications would allow the Commission to make **[*22]** a determination consistent with Act 9 and MCL 324.1705(2), the Commission could base its determination on those materials. In this regard, it is noted that the motions to intervene were not before the Commission at the time it made its determinations regarding Encana Oil's applications. Thus, the allegations in those petitions did not have to be considered. However, Farrier indicated that there would be impairments to natural resources in his environmental impact assessments. He indicated that there would be, among other impairments, clearing of vegetation, but that the route would offer minimal impact because it would be along existing corridors. He further indicated that alternatives were reviewed and none appeared to have less impact. The Commission noted that these environmental assessments had been attached to the applications. However, it did not discuss the

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contents or expressly adopt Farrier's representation that alternatives were reviewed and none appeared to have less impact, i.e., that there was no feasible and prudent alternative to the impairment, and did not address whether the impairment was consistent with the promotion of the public health, safety, and welfare in light of the state's **[*23]** paramount concern for the protection of its natural resources from pollution, impairment, or destruction. *State Hwy Comm*, 392 Mich at 185 (opinion by Williams, J.). Accordingly, it is necessary to remand this case for the Commission to expressly make such a determination.

Buggs and Bonamie argue that Farrier's environmental impact assessments were insufficient to allow the Commission to make the requisite findings required by the MEPA. They claim that the assessments themselves should have caused the Commission to realize that they were inadequate on their face: Farrier analyzed the impact within the proposed easement, but did not include the impact on the environment in the vicinity; Farrier professed not to know of protected or endangered species, but did not certify that there were none; and Farrier claimed to be a biologist, but listed no supporting credentials. They also assert that the assessments were not signed or dated. However, the cover pages bore a date of January 2013 and indicated that they were prepared by Farrier. Buggs and Bonamie cite no authority that speaks to the requisite sufficiency of proofs on which the Commission must base its decision. The assessments described the routes along existing **[*24]** corridors, indicated that to the best of Farrier's knowledge "there were no threatened or endangered species within the proposed easements" or "along the proposed routes," described the clearing that would take place, and represented that the

> workspace will be graded as near as possible to pre-construction contours and/or restored in accordance with Kalkaska County Road Commission permit requirements, and natural runoff and drainage patterns will be restored. All existing improvements, such as fences, gates, bar ditches, and beaver deceivers, will be maintained and repaired to as good as or better than pre-construction conditions. Permanent erosion control measures will be installed, and all disturbed workspace will be reseeded.

Although Buggs and Bonamie's claims that the Kirtland Warbler is protected or endangered and that its habitat would be affected are troubling, allegations to this effect were not before the Commission at the time it reviewed the applications. Moreover, allegations that Encana Oil intended to add more pipelines that would create new corridors would seem to be pertinent to future applications for pipeline approval, but not to the lines at issue. While the Commission **[*25]** might have been inclined to seek more information if cognizant of the requirement that it assess whether there were feasible and prudent alternatives and whether the conduct is consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, or destruction, the representations made by Farrier in the Assessments were not inherently suspect such that they could not be deemed substantial evidence on the whole record to support the Commission's findings.

III. CONCLUSION

Although the Commission minimally complied with the requirements for approving the applications under Act 9, it failed to follow the independent statutory requirement imposed under MEPA. Because its orders approving the pipelines were unlawfully issued, we vacate those orders and remand for a new necessity determination in both dockets. In making its new determinations of necessity, the Commission shall specifically address the environmental impact as required under the MEPA and the decision in *State Hwy Comm*, 392 Mich at 184-190 (opinion by Williams, J.).

Vacated and remanded for further proceedings consistent with this opinion. We do not **[*26]** retain jurisdiction. We further order that none of the parties may tax their costs. MCR 7.219(A).

/s/ Michael J. Kelly

/s/ Mark J. Cavanagh

/s/ Patrick M. Meter

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