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STATE OF MICHIGAN
IN THE COURT OF APPEALS

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

SC: 168335
Court of Appeals Nos. 369156 369157, 369159, 369161, 369162, 369163, 369165, 369231 (consolidated)

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,

MPSC Case No. U-20763

Appellants,

v.

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee.

AMICUS CURIÆ BRIEF OF THE SMALL BUSINESS ASSOCIATION OF MICHIGAN[1]

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[1] The Small Business Association of Michigan attests that it is exempt from taxation under 20 USC 501(c)(6). See MCR 7.312(H)(2)(F). Additionally it discloses this brief was authored by Rivenoak Law Group, P.C. No monetary contributions intended to fund its preparation or submission were made by any parties or any individual or entity other than members of the *amicus curiæ*. See MCR 7.312(H)(3).

RECEIVED by MSC 1/23/2026 6:47:04 PM

Table of Contents

STATEMENT OF BASIS OF JURISDICTION 1

STATEMENT OF QUESTION PRESENTED 1

INTRODUCTION 2

ARGUMENT 4

1. The MPSC's Decision Was Correct: A Pipeline in a Tunnel is Better for the Environment than Pipelines on the Bottom of the Straits. 4

2. Failure to Build the Tunnel Will Likely Lead to Years of Operation of the Existing Pipelines. 5

CONCLUSION 7

STATEMENT OF COUNTABLE WORDS 8

RECEIVED by MSC 1/23/2026 6:47:04 PM

INDEX OF AUTHORITIES

Cases

Attorney Gen. v. Pub. Serv. Comm., 165 Mich App 230, 235; 418 N.W.2d 660 (1987) 4
Enbridge Energy, Ltd. P'ship v. Whitmer, No. 1:20-cv-1141-RJJ-RSK, ECF No. [164], PageID. [43] (WD Mich, Dec 17, 2025) 3, 5, 6
Michigan v. Enbridge Energy, Ltd. P'ship, 571 FSupp3d 851, 859, 862 (WD Mich, 2021) 5, 6

Statutes

1969 PA 306 1, 4
MCL 24.301 to MCL 24.306 1
MCL 324.503 6
MCL 460.59 1
MCL 462.26 1

Other Authorities

In re Application of Enbridge, order of the Public Service Commission, entered December 1, 2023 (Case No. U-20763) 3, 4
Michigan Attorney General's Office. Letter to Bradley F. Shamla (Enbridge) re Line 5 Dual Pipelines at the Straits of Mackinac (Sept 1, 2017) 3
Mich. Dep't of Env't, Great Lakes, & Energy, *MDEQ Issues Enbridge a Permit for 48 Anchors in Straits* (Dec 4, 2018) 3

Rules

MCR 7.02(6)(a)(i) 1
MCR 7.212(H)(3) 1
MCR 7.301(A) 1
MCR 7.312(H)(3). 1, 4

Constitutional Provisions

Const 1963, art 6, § 28 1, 4

RECEIVED by MSC 1/23/2026 6:47:04 PM

STATEMENT OF BASIS OF JURISDICTION

The Supreme Court has jurisdiction in this appeal under Const 1963, art 6, § 28; the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.301 to MCL 24.306; MCL 462.26; MCL 460.59; MCR 7.301(A); and MCR 7.02(6)(a)(i).

STATEMENT OF QUESTION PRESENTED

1. Should this Court uphold the December 1, 2023 Order of the Michigan Public Service Commission ("MPSC") approving Enbridge's application to replace existing operating pipelines in the Straits of Mackinac with a new section in a tunnel?

APPELLANTS' ANSWER: No

APPELLEES' ANSWER: Yes

AMICUS' ANSWER: Yes

STATEMENT OF INTEREST FOR *AMICUS CURIÆ* SMALL BUSINESS ASSOCIATION OF MICHIGAN

The membership of the Small Business Association of Michigan ("SBAM") supports the MPSC's decision to grant the application at issue in this case, because the underlying project would lower the risk to Michigan's environment and economy. With more than 32,000 businesses in every sector of Michigan's economy and geography, SBAM's membership, like the people of Michigan, would benefit from essentially eliminating the risk of an oil spill in the Straits of Mackinac from Enbridge's Line 5 petroleum pipeline ("Line 5"). SBAM members have closely followed the Enbridge application to the MPSC at issue in this case, as well as the litigation regarding the pipeline more broadly. SBAM believes the relocation of existing pipelines in an

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underground tunnel is the most reliable way to protect Michigan's environment, its businesses, and its consumers, and that failing to grant the permit as proposed is likely to lead to a continuation of the current pipeline indefinitely, with options to ensure the safety of that line.

Small business owners depend on both the environmental assets of the State of Michigan and reliable energy supplies to allow small businesses to flourish. An oil spill in the Straits of Mackinac (the "Straits") would be potentially catastrophic for SBAM's members in many ways, including but not limited to harms to potable and non-potable water supply, reduction of tourism, and energy supply disruptions. Thus, SBAM members have an interest in the affirmation of the MPSC's December 1, 2023 order and in expeditious implementation of the underlying project.

INTRODUCTION

SBAM members have closely followed the Enbridge application to relocate approximately four miles of the Line 5 petroleum pipeline ("Line 5") in the Straits of Mackinac ("Straits") into a tunnel in order to essentially eliminate the risk of an oil spill in the waters of the Straits. While there is enough dispute between the parties to have generated thousands of pages of materials and numerous lawsuits (including this one), there is one area of agreement: the status quo is no party's desired outcome. SBAM supports the application because it does not want the status quo to be Michigan's future. Until and unless the tunnel is constructed, Michigan's environment and energy supplies will be at an unnecessary level of risk.

The MPSC took years to pore through thousands of pages of evidence and argument to answer a simple question: Would Michigan's public interest and environment be better protected if the petroleum pipelines operating in the waters of the Straits were replaced with a pipeline located in a tunnel built in bedrock? It is unsurprising the MPSC answered that question in the affirmative, noting "in the last five years, the dual pipelines have experienced two incidents,

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including one anchor strike incident, that could have resulted in a catastrophic release of Line 5 products into the Straits." *In re Application of Enbridge*, order of the Public Service Commission, entered December 1, 2023 (Case No. U-20763), p. 346, citing 10 Tr 1333-1334; 12 TR 1724-1725; Exhibit S-6, p.1. This court should affirm the decision of the MPSC.

In the several years since the MPSC granted the permit, separate litigation over the current line has now yielded a federal court decision finding that not only is Michigan unable to shut down the current pipelines, the State is not permitted to enforce safety measures found within its 1953 easement for the existing dual pipelines. *Enbridge Energy, Ltd. P'ship v. Whitmer*, No. 1:20-cv-1141-RJJ-RSK, ECF No. [164], PageID. [25-27] (W.D. Mich. Dec. 17, 2025). ("[Michigan's] enforcement of the safety conditions in the 1953 Easement is preempted because Congress reserved these judgments exclusively to the federal government.") *Enbridge*, No. 1:20-cv-1141, at PageID.27 (W.D. Mich. Dec. 17, 2025). In prior years, Michigan's government had relied on these provisions of the easement in communications to Enbridge, and Enbridge agreed to install additional supports and to make coating repairs. See, e.g., Attachment 1, Michigan Attorney General's Office. Letter to Bradley F. Shamla (Enbridge) re Line 5 Dual Pipelines at the Straits of Mackinac (Sept 1, 2017) and Attachment 2, Mich. Dep't of Env'tal Quality (now Mich. Dep't of Env., Great Lakes, & Energy), *MDEQ Issues Enbridge a Permit for 48 Anchors in Straits* (Dec 4, 2018).

. While the question of state vs. federal authority is not before the court today, it is important context, because it shows further delay or refusal to permit the tunnel is most likely to result in a status quo, with fewer tools to ensure the safety of those lines than previously existed. The proposed tunnel is far more protective of both the citizens and the waters of Michigan far more protections. In short, SBAM believes overturning the MPSC's meticulously-supported decision

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would most likely result in Michigan, and SBAM members, continuing to bear unnecessary risks for decades to come.

ARGUMENT

1. *The MPSC's Decision Was Correct: A Pipeline in a Tunnel is Better for the Environment than Pipelines on the Bottom of the Straits.*

In the proceedings before the MPSC, Enbridge applied for, and was granted, permission to replace a segment of dual operating petroleum pipeline located in the waters of the Straits and relocate the pipelines into a tunnel that the application demonstrated will meet and exceed federal safety standards (the "Replacement Project"). As other parties have explained, the order met the necessary Constitutional standard, as it was both authorized by law and supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28. See also *Attorney Gen. v. Pub. Serv. Comm.*, 165 Mich App 230, 235; 418 N.W.2d 660 (1987).

The Commission's lengthy decision followed years and years of proceedings and consideration of thousands upon thousands of pages to answer a question that is fairly straightforward: is it better for the environment to transport petroleum in a pipeline housed in a tunnel in bedrock or in pipelines on the bottom of the Great Lakes? The MPSC reached the obvious conclusion, which is that there are not feasible and prudent alternatives to Enbridge's proposed tunnel that would better protect Michigan's environment.

The counter to this argument that is offered by the appellants is, at its heart, that the MPSC failed to consider the alternative of the dual pipelines, or Line 5 as a whole, not operating. As SBAM has warned from its very first comment to the MPSC, denial of the tunnel permit is very likely to result in the operation of the dual pipelines in the waters of the Great Lakes for many, many years to come. MPSC Docket Number U-20763-0258 (8/24/2020). More than five years

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after SBAM issued that warning, the results of other related litigation show that SBAM was right to voice this concern. If this Court decides that the MPSC must assume that Line 5 doesn't exist for the purposes of environmental analysis, as the appellants urge, the ironic outcome is very likely to be that Michigan lives with those pipelines (and the risks they pose) for decades to come, as explained below.

2. *Failure to Build the Tunnel Will Likely Lead to Years of Operation of the Existing Pipelines.*

In *Enbridge Energy, Limited Partnership v Governor of Michigan*, the federal district court recently held that Michigan lacks authority to unilaterally shut down the interstate Line 5 pipeline based on state safety concerns, because of both the international treaties at issue and because federal law pre-empted the field. *Enbridge*, No. 1:20-cv-1141, at PageID.43 (WD Mich, Dec. 17, 2025). The decision took care to note the pre-emption existed even if a state's concerns are serious and well-founded—such as the risk of a catastrophic spill in the Great Lakes. *Id.* at PageID.44. This decision was broadly compatible with that of a different federal judge in similar case regarding the state's authority over Line 5, who also found that questions of federal law were likely to be decisive. *Michigan v. Enbridge Energy, LP*, 571 FSupp3d 851, 859, 862 (WD Mich, 2021).

The December 17, 2025 opinion does more than prohibit Michigan from unilaterally shutting down Line 5; it also substantially constrains the State's ability to enforce safety-related conditions associated with the existing 1953 easement. *Enbridge*, No. 1:20-cv-1141, at PageID.25-26 (W.D. Mich.). Under that framework, the court found, state action that conditions continued operation of an interstate pipeline on compliance with state-imposed safety measures is preempted,. *Id.* at PageID.24-29. While this decision will likely be appealed, it points to the substantial likelihood that if the Michigan law does not allow the siting of the pipeline within the

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tunnel, the dual pipelines will continue to operate—and potentially leaving the State left with even fewer tools to enforce Line 5's safety than it had before the appellants began their efforts.

The easement that the State of Michigan granted to Applicant that first allowed the placement of Line 5 in the waters of the Straits has no expiration date. *Michigan v Enbridge Energy, LP*, 571 FSupp3d 851, 855 (WD Mich, 2021), citing ¶18 of the easement. The application here is a clear path away from the status quo through voluntary action: Enbridge has agreed with the State of Michigan to relocate the pipelines into a privately constructed, publicly-owned tunnel and essentially eliminate the risk of an oil spill in the Straits.

Appellants appear not to contest that continued operation of Line 5 in open water is worse for Michigan's environment than the tunnel alternative — even before the continued operation was paired with diminished state authority to reduce risk through state-law mechanisms. Allowing Line 5 to be housed in a bedrock tunnel in accordance with the agreement authorized by state law achieves a structural reduction of risk that that is permissible even under this interpretation of federal law, all while advancing Michigan's public trust responsibilities. Affirmance of the MPSC order permitting the tunnel therefore serves, rather than undermines, the State's sovereign and environmental interests that NREPA was intended to protect. MCL 324.503.

This case is fundamentally about whether the most likely path out of the status quo will remain open, and how many more years Michiganders must live with unnecessary risks of an oil spill. If Appellants are successful and permission to construct the tunnel is denied, then SBAM believes this Court will be signing Michigan up for decades of petroleum pipelines sitting in the waters of the Great Lakes. That is not a reasonable or prudent option, as the MPSC's decision explains at length. It is also the only outcome that *none* of the parties want. Yet, if this court

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upholds MPSC's order and allows Enbridge to proceed, it will allow Michigan to implement the only likely way to essentially eliminate the risk of a catastrophic oil spill in the Straits.

CONCLUSION

In its December 1, 2023 Order, the MPSC came to a decision that is clearly correct at its heart: it would be better to essentially eliminate the risk of a catastrophic oil spill in the Straits than it would be to continue to bear that risk. This court should protect Michigan's waters by upholding that decision. The only likely path that leads to the removal of two petroleum pipelines from the lakebed of the Great Lakes is to grant the application. SBAM urges this court not to take away Michigan's best opportunity to avoid decades of unnecessary risk to its waters, environment and economy.

Respectfully submitted,

RIVENOAK LAW GROUP, P.C.

By: 

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Dated: January 23, 2026

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STATEMENT OF COUNTABLE WORDS

Pursuant to MCR 7.312(A), I certify that this brief is compliant with the formal limitations of MCR 7.212(B) and contains 1,885 words, exclusive of the statement of questions presented, the table of contents, the table of authorities, the signature block, and this word count statement, in compliance with MCR 7.312(B)(2). The word count was determined using the word count function of Microsoft Word.

/s/ Valerie J. M. Brader
Valerie J. M. Brader (P66401)

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INDEX OF ATTACHMENTS

Attachment 1	Michigan Attorney General's Office. Letter to Bradley F. Shamla (Enbridge) re Line 5 Dual Pipelines at the Straits of Mackinac (Sept 1, 2017).
Attachment 2	Mich. Dep't of Env't, Great Lakes, & Energy, *MDEQ Issues Enbridge a Permit for 48 Anchors in Straits* (Dec 4, 2018),

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Attachment 1

Michigan Attorney General's Office
Letter to Bradley F. Shamla (Enbridge)
re Line 5 Dual Pipelines at the Straits of Mackinac
Sept.1, 2017

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

P.O. BOX 30212
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

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September 1, 2017

Via Electronic Mail

Bradley F. Shamla
Vice President, U.S. Operations
Enbridge Energy Limited Partnership
Enbridge Pipelines (Lakehead) LLC
7701 Francis Avenue South, Suite 600
Edina, MN 55435

Re: Line 5 Dual Pipelines at the Straits of Mackinac

Dear Mr. Shamla:

We write to you requesting that Enbridge promptly take actions to address the recently disclosed gaps in the external coating of the Line 5 dual pipelines at the Straits of Mackinac. Specifically, as outlined below, we are requesting that Enbridge (a) describe and document the observed gaps in the pipeline coating; (b) inspect the condition of the external coating near each location where Enbridge has previously installed pipeline anchors to determine whether, and to what extent such installation has damaged the external coating; and (c) develop and implement plans to repair the external coating in any areas where it has been damaged or is absent.

Background

As you know, the design specifications for the dual pipelines contained in the 1953 Pipeline Easement granted by the State to Enbridge's predecessor include two types of protections against potential external corrosion of the pipelines: physical protections on the outside of the pipes (asphalt coating and two layers of fiberglass wrap) and cathodic protection. See Easement Conditions A (8) and (9).

On March 8, 2017, we requested that Enbridge provide the State with detailed information regarding the condition and previous inspections of the pipelines. As explained in that letter, we requested that information in order to evaluate Enbridge's compliance with the terms of the 1953 Easement and to clarify Enbridge's previous, confusing statements regarding the existence of so-called

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"holidays" in the external pipeline coating referenced in Enbridge's September 2016 Biota Work Plan.[1]

On March 29 and 31, 2017, Enbridge provided detailed responses to the State's information request. With respect to the State's specific request for information about whether, and to what extent bare metal was exposed in any so called "holiday" area referred to in the September 2016 Biota Work Plan, Enbridge responded as follows:

> *Enbridge has seen no evidence that any of the areas identified in the Biota Work Plan as "holiday" areas or areas with "potential delaminated coating" have bare metal exposed.* In addition, a CPCM inline inspection was completed and local cathodic protection currents were measured to determine if any bare metal was present. This inspection has not indicated that there are any holidays in the coating. [Response, Section A. 2. b.ii.]

Enbridge prepared its Revised Biota Work Plan in May. 2017[2] that was approved by US EPA in June, 2017[3]. Enbridge began implementing the Work Plan in August, and we understand that the underwater inspection and sampling portion of the work is currently expected to continue through mid- September.

On August 30, 2017, Enbridge informally notified the State of Michigan by telephone that during the course of the ongoing visual inspection work, Enbridge had identified at least two locations on the pipeline where both the fiberglass wrap and the asphalt coating were absent, leaving bare metal exposed to the water. You characterized these gaps in the external coating as "small" and indicated that the larger of the two was approximately one square foot in size. And you also indicated that at least one of these gaps in the external coating was located adjacent to a place where Enbridge previously installed a pipeline anchor to provide physical support to the pipeline and comply with the 75 foot pipeline span limit specified in the 1953 Easement.

---

[1] https://www.epa.gov/sites/production/files/2017-03/documents/enbridge-line5-biota-investigation-workplan-20160927-46pp.pdf

[2] https://www.epa.gov/sites/production/files/2017-05/documents/enbridge_line_5_biota_investigation_work_plan_ma.pdf

[3] https://www.epa.gov/sites/production/files/2017-06/documents/epa_line_5_biota_investigation_work_plan_approval_letter.pdf

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This very recent development raises several serious concerns. First, the external pipeline coating, including the asphalt coating layer, is an integral part of the pipeline design that was and remains a condition of the 1953 Easement. While the pipeline is also equipped with cathodic protection to provide additional protection against corrosion, the external coating is an essential element of design measures required to minimize the risk of pipeline failure and to protect the public trust resources of the Great Lakes. Gaps in the coating are unacceptable and should be promptly repaired.

Second, the fact that at least one of the identified gaps in the coating is near a previously installed pipeline anchor strongly suggests that the methods used by Enbridge to install the anchor may have caused the damage to the coating. And, if that occurred at one location, it raises the question of whether the coating was damaged during the installation of any of the other 127 anchors since 2002. Accordingly, the pipelines should be inspected at each of the locations where anchors were previously installed to determine whether the external coating is intact, and if it is not the coating should be promptly repaired.

Third, the fact that damage to the external coating went "undetected" and unreported by Enbridge for some time after the damage was apparently caused by an Enbridge contractor casts doubt on Enbridge's stewardship of the pipeline and its diligence in minimizing risks associated with its operation. As a practical matter, the damage to the coating would presumably have been evident to the contractor at the time the anchor was installed. Enbridge should have had in place procedures for minimizing the risk of damage to the pipeline during anchor installation, detecting damage if it occurred, and promptly repairing it. Enbridge's apparent failure to do so is inconsistent with its continuing obligation under the Easement to exercise reasonable prudence in its operation and maintenance of the pipeline.

Requested Actions

For the reasons outlined above, the State requests the following actions by Enbridge:

1. Within 7 days from the date of this letter, provide the State with an interim report describing each location where damage to the external coating has been observed, the extent and nature of the damage, and any available documentation, including, without limitation, photographs and videos.

2. Within 14 days from the date of this letter, provide the State with a plan to inspect each area on the pipeline where a pipeline anchor was installed to determine whether and to what extent the external coating has been

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damaged. The plan should include an implementation schedule and is subject to approval by the State.

3. Within 21 days from the date of this letter, provide the State with a plan detailing the materials, methods and procedures Enbridge will use to repair all areas where damage to the external coating is identified. The plan should include an implementation schedule and is subject to approval by the State. We expect that the Schedule would provide for completion of repairs in the identified areas as soon as possible, and in any event within the same construction season during which they are identified.

We recognize that Enbridge is currently implementing the EPA-approved Biota Work Plan. The pipeline coating inspections and repairs we are requesting are broader in scope than those covered in that Work Plan, and are intended to supplement, not duplicate those actions required by US EPA. To the extent possible, we encourage Enbridge to take advantage of the resources and personnel it has already mobilized at the Straits for carrying out the Biota Work Plan in order to expedite the actions we are requesting.

Thank you for your immediate attention to this matter and your anticipated cooperation.

Sincerely,

Bill Schuette	Keith Creagh	C. Heidi Grether
Bill Schuette Attorney General State of Michigan	Keith Creagh Director, Department of Natural Resources	C. Heidi Grether Director, Department of Environmental Quality

cc: Governor Rick Snyder
Valerie Brader, Executive Director, Michigan Agency for Energy
Lisa Wilson, Enbridge Energy

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Attachment 2

Mich. Dep't of Env'tal Quality
(now Mich. Dep't of Env't, Great Lakes, & Energy)

MDEQ Issues Enbridge a Permit for 48 Anchors in Straits
Dec. 4, 2018

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News Release: MDEQ issues Enbridge a permit for 48 anchors in Straits

Michigan Department of Environment, Great Lakes, and Energy sent this bulletin at 12/04/2018 04:12 PM EST

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For Immediate Release:
December 4, 2018

Contacts:
Scott Rasmusson, MDEQ Environmental Quality Analyst, rasmussons@michigan.gov, 989-313-9708
DEQ Media Office, deq-assist@michigan.gov, 517-284-9278

MDEQ issues Enbridge a permit for 48 anchors in Straits

LANSING, MICH. The Michigan Department of Environmental Quality (MDEQ), Water Resources Division, has issued Enbridge a permit to install 48 anchor support structures into the lake bed on Line 5 pipelines to decrease the span distance at these locations within the Straits of Mackinac. The project is located in Wawatam Township, Emmet County and Moran Township, Mackinac County, Michigan. MiWaters permit number WRP014208 v.1.

The MDEQ completed its review and drafted the permit on November 5, 2018, under authority of Part 325, Great Lakes Submerged Lands, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. Enbridge returned the permit on Friday November 30, 2018.

Project activities involve the installation of a helical anchoring system with saddle mounts around the pipeline in each of the proposed locations. The 48 anchors will be augured directly into the lake bed using 10-inch diameter screws. The total direct lake bottom impact of all screw augers will be approximately 20 cubic yards with a total footprint of about 53 square feet. Permit conditions require verification of anchor support placement by diver or remote operate vehicle

including documentation of pipeline coating conditions after anchors are installed.

The 48 proposed anchors are for the purpose of minimizing the potential of having any pipe spans exceeding 75 feet. This work is being completed to fulfill Enbridge's obligations under the State of Michigan 1953 bottomlands easement between Enbridge and the Michigan Department of Natural Resources, as well as the Enbridge-U.S. Environmental Protection Agency Federal Consent Decree. This project is not associated with any new utility installation.

# # #

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