



June 25, 2020

Ms. Lisa Felice  
Michigan Public Service Commission  
7109 W. Saginaw Hwy.  
P. O. Box 30221  
Lansing, MI 48909

*Via E-filing*

RE: MPSC Case No. U-20763

Dear Ms. Felice:

The following are attached for paperless electronic filing:

- Supplemental Authority Submitted by Bay Mills Indian Community Regarding Enbridge Energy, Limited Partnership's Request for Declaratory Relief
- Proof of Service

Sincerely,

Christopher M. Bzdok  
[Chris@envlaw.com](mailto:Chris@envlaw.com)

xc: Parties to Case No. U-20763

**STATE OF MICHIGAN**  
**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

**IN RE ENBRIDGE ENERGY**

In the matter of the application for the authority to replace and relocate the segment of Line 5 crossing the Straits of Mackinac into a tunnel beneath the Straits of Mackinac, if approval is required Pursuant to 1929 PA 16; MCL 483.1 *et seq.* and Rule 447 of the Michigan Public Service Commission’s Rules of Practice and Procedure, R 792.10447, or the Grant of other Appropriate Relief

**Case No. U-20763**

**SUPPLEMENTAL AUTHORITY SUBMITTED**  
**BY BAY MILLS INDIAN COMMUNITY**  
**REGARDING ENBRIDGE ENERGY, LIMITED PARTNERSHIP’S REQUEST FOR**  
**DECLARATORY RELIEF**

Bay Mills Indian Community (“Bay Mills”) respectfully submits this supplemental authority to bring to the Commission’s attention recent motions and briefs filed by the Michigan Attorney General in *Nessel, v. Enbridge Energy, Ltd., et al*, No. 19-474-CE (Ingham County Cir. Ct. Michigan) (the “Ingham County Litigation”). In its comments previously submitted regarding the pending request for declaratory relief by Enbridge Energy, Limited Partnership (“Enbridge”), Bay Mills argued that Enbridge’s request for a declaratory ruling should be denied in light of the pending request in the Ingham County Litigation for an injunction requiring Enbridge to cease operation of Line 5 in the Straits. Bay Mills also argued that the request for a declaratory ruling should be denied because the environmental impacts of the proposed project must be evaluated by the Commission, particularly in light of concerns about Enbridge’s record with respect to safety and transparency about safety issues.

On June 22, 2020, in the Ingham County Litigation, the Attorney General filed a Motion For Preliminary Injunction (attached as Exhibit A), a Motion For Temporary Restraining Order Pending Hearing on Motion For Preliminary Injunction (attached as Exhibit B), and briefs in support of each motion (attached as Exhibits C and D). In these filings, the Attorney General seeks a temporary restraining order and preliminary injunction requiring Enbridge to cease operation of Line 5. In the brief in support of the motion for a preliminary injunction, the Attorney General states:

- “On Thursday, June 18, 2020, representatives of the Defendant Enbridge entities (Enbridge) informed the State of Michigan that Enbridge had discovered new evidence of substantial damage to the Line 5 dual pipelines infrastructure.”
- “On Friday, June 19, 2020, the Governor requested that Enbridge immediately provide the State of Michigan with all information in its possession related to this issue, with digital information provided within 24 hours and all remaining information provided no later than Monday June 22, 2020.”
- “Despite initially stating that it would provide the requested information Enbridge has failed to provide an adequate response, providing two short engineering reports on Monday, June 22, but none of the underlying data that went into the reports, no video, and only the small number of photographs included in the reports.”
- “[T]he response failed to explain how the damage occurred and what measures will be taken to prevent a recurrence.”

Brief in Support of Plaintiff’s Motion For Preliminary Injunction, attached as Exhibit D, pp. 1-2.

The Attorney General’s filings on June 22, and the allegations contained therein, relate to Bay Mills’ arguments that the Commission must evaluate the environmental impacts of Line 5. The allegations also heighten Bay Mills’ concerns about Enbridge’s record with respect to safety and transparency.

**Respectfully submitted,**

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Counsel for Bay Mills Indian Community

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STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

DANA NESSEL, ATTORNEY GENERAL OF  
THE STATE OF MICHIGAN, ON BEHALF  
OF THE PEOPLE OF THE STATE OF  
MICHIGAN,

No. 19-474-CE

Plaintiff,

HON. JAMES S. JAMO

v

ENBRIDGE ENERGY, LIMITED  
PARTNERSHIP; ENBRIDGE ENERGY  
COMPANY, INC.; and ENBRIDGE ENERGY  
PARTNERS, L.P.,

Defendants.

---

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**PLAINTIFF'S EX PARTE MOTION FOR  
TEMPORARY RESTRAINING ORDER PENDING  
HEARING ON MOTION FOR PRELIMINARY INJUNCTION**

The Plaintiff, Dana Nessel, Attorney General of the State of Michigan, on behalf of the people of the State of Michigan, brings this ex parte motion for a temporary restraining order pursuant to MCR 3.310(B).

The purpose of this motion is to preserve the status quo until the Court can hear and decide the Plaintiff's contemporaneously filed motion for preliminary injunction. A temporary restraining order preserving the last peaceable, uncontested status quo is necessary to prevent two irreparable injuries. First, the grave risk of irreparable injury to the Great Lakes if Defendants continue operation of the west leg of the Line 5 dual pipelines, or resume operation of the east leg of the pipelines, before the Court can consider Plaintiff's motion for a preliminary injunction.

Second, the State of Michigan will suffer an irreparable injury if Defendants continue operation of the west leg of the pipelines, or resume operation of the east leg of the pipelines, without first providing legally required information to the State for its review and determination that it is safe to resume pipeline operations.

Consistent with MCR 3.310(B)(2), undersigned counsel for the Plaintiff certifies that he attempted to contact Defendants' counsel Philip DeRosier, who has been Plaintiff's primary point of contact in this matter, via telephone at approximately 3:40 p.m., and via email at approximately 3:50 p.m. on June 22, 2020, to provide notice of this motion.

For these reasons, as set forth more fully in the brief in support of this motion, the Plaintiff respectfully requests that the Court enter a temporary

restraining order enjoining operation of the Line 5 dual pipelines in the Straits of Mackinac until the Court can rule on Plaintiff's motion for preliminary injunction.

Respectfully submitted,

Dana Nessel  
Attorney General

/s/Daniel P. Bock  
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Dated: June 22, 2020

LF: Enbridge Straits (AG v)/AG #2019-0253664-B-L/Motion for TRO 2020-06-22

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

DANA NESSEL, ATTORNEY GENERAL OF  
THE STATE OF MICHIGAN, ON BEHALF  
OF THE PEOPLE OF THE STATE OF  
MICHIGAN,

No. 19-474-CE

Plaintiff,

HON. JAMES S. JAMO

v

ENBRIDGE ENERGY, LIMITED  
PARTNERSHIP; ENBRIDGE ENERGY  
COMPANY, INC.; and ENBRIDGE ENERGY  
PARTNERS, L.P.,

Defendants.

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**PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

The Plaintiff, Dana Nessel, Attorney General of the State of Michigan, on behalf of the people of the State of Michigan, brings this motion for a preliminary injunction pursuant to MCR 3.310(A).

For the reasons set forth in the brief in support of this motion, the Attorney General respectfully requests that the Court:

A. Enter a preliminary injunction requiring the Defendants to perform the following actions:

1. Immediately provide the State of Michigan any and all information in their possession related to the nature, extent, and cause(s) of newly-discovered damage to the Line 5 dual pipelines and their supporting infrastructure in the Straits of Mackinac first reported to the State on June 18, 2020, including without limitation all inspection reports, photographs, unedited video recordings, engineering evaluations, and the basis for Enbridge's conclusion, if any, that it was or is reasonably prudent to re-start either pipeline;

2. Preserve the status quo by ceasing operation of both legs of the dual pipelines until the State of Michigan can conduct a full review of the information with the assistance of independent experts, and Enbridge affirmatively establishes that it is reasonably prudent to resume their operation; and

B. Grant the Attorney General other relief as the Court finds appropriate and just.

Respectfully submitted,

Dana Nessel  
Attorney General

*/s/Daniel P. Bock*  
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Dated: June 22, 2020

LF: Enbridge Straits (AG v)/AG #2019-0253664-B-L/POS 2020-06-22

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

DANA NESSEL, ATTORNEY GENERAL OF  
THE STATE OF MICHIGAN, ON BEHALF  
OF THE PEOPLE OF THE STATE OF  
MICHIGAN,

No. 19-474-CE

Plaintiff,

HON. JAMES S. JAMO

v

ENBRIDGE ENERGY, LIMITED  
PARTNERSHIP; ENBRIDGE ENERGY  
COMPANY, INC.; and ENBRIDGE ENERGY  
PARTNERS, L.P.,

Defendants.

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**BRIEF IN SUPPORT OF PLAINTIFF'S EX PARTE MOTION  
FOR TEMPORARY RESTRAINING ORDER PENDING  
HEARING ON MOTION FOR PRELIMINARY INJUNCTION**

The facts and law that support this motion are set forth in Plaintiff's contemporaneously filed motion for preliminary injunction and brief in support and are incorporated herein by reference. In this situation, a preliminary injunction alone is not sufficient. Given Enbridge's clear willingness to reactivate the Line 5 dual pipelines on state owned bottomlands without consulting state government officials consistent with its contractual agreements with the state, even immediately after informing the Governor that the pipelines had been shut down, a temporary restraining order is necessary to ensure that the pipelines remain inactive until the Court can hear and decide Plaintiff's motion for preliminary injunction.

As set forth in the Plaintiff's brief in support of its motion for preliminary injunction, the last actual, peaceable, uncontested status quo was that the Line 5 dual pipelines were shut down pending an investigation into the newly discovered damage to the pipelines and their infrastructure. (6/22/20 Brief in Support of Motion for Preliminary Injunction, pp 12–13.)

Enbridge's actions of informing the Governor via a letter from its CEO that the pipelines were shut down pending investigation, only to almost immediately resume operation of one leg of the pipelines, demonstrate that its statements to government regulators are, at best, inconsistent with its actions. At worst, they are misleading.

As set forth in the attached affidavit of Daniel Eichinger, the people of the State of Michigan will suffer immediate and irreparable injury, loss, or damage

from the delay required to effect the usual notice provisions required by the Michigan Court Rules. (Ex A, ¶¶ 5–11.) Specifically, Enbridge has already reactivated one leg of the Line 5 pipelines, in apparent contradiction of its formal letter to the Governor issued earlier the same day. (Ex A, ¶ 6; Exs B and C to Plaintiff’s 6/22/20 Brief in Support of Motion for Preliminary Injunction.) This decision to reactivate the west leg was made without first providing the information Enbridge was legally required to provide to the State, and without any understanding of the cause of the newly discovered damage to the pipelines and supporting infrastructure. (*Id.*)

The fact that the west leg is operating without the assurance of a full investigation, and without any involvement by State regulators, in and of itself constitutes an immediate and irreparable injury to the people of the State of Michigan. (Ex A, ¶¶ 7–8.) The people of the State have an interest in ensuring that privately owned infrastructure that threatens the Great Lakes is operated in a reasonably prudent and legal manner, complete with appropriate government oversight. By shirking its legal obligations to share information with the State, Enbridge has irreparably harmed the people by denying their ability to oversee Enbridge’s operations on public trust bottomlands and protect the Great Lakes.

Additionally, given Enbridge’s cavalier attitude toward the risk its pipelines pose to the Great Lakes, and its indifferent response to its legal obligations and the reasonable requests of State government officials, there is no reason to believe that Enbridge will consult State officials before it reactivates the east leg of the

pipelines. After all, that is exactly what it did with the west leg as recently as Saturday, June 20, 2020. (Ex A, ¶¶ 6–10.) This would constitute a second immediate and irreparable injury that cannot be avoided absent the issuance of a temporary restraining order.

Finally, there is a far graver risk of irreparable harm: the risk of a release of oil from the Line 5 pipelines into the waters of the Straits of Mackinac. (Ex A, ¶ 11; 6/22/20 Brief in Support of Motion for Preliminary Injunction, pp 11–12, 13, and 14.)

### **CONCLUSION AND RELIEF REQUESTED**

For the reasons set forth above, the Attorney General respectfully requests that this Court enter a temporary restraining order enjoining the operation of the Line 5 dual pipelines in the Straits of Mackinac until such time as the Court can rule on the Plaintiff’s motion for preliminary injunction.

Respectfully submitted,

Dana Nessel  
Attorney General

/s/ Daniel P. Bock  
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Dated: June 22, 2020

# EXHIBIT A

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

DANA NESSEL, ATTORNEY GENERAL OF  
THE STATE OF MICHIGAN, ON BEHALF  
OF THE PEOPLE OF THE STATE OF  
MICHIGAN,

Plaintiff,

v

ENBRIDGE ENERGY, LIMITED  
PARTNERSHIP; ENBRIDGE ENERGY  
COMPANY, INC.; and ENBRIDGE ENERGY  
PARTNERS, L.P.,

Defendants.

No. 19-474-CE

HON. JAMES S. JAMO

**AFFIDAVIT OF DANIEL  
EICHINGER**

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would provide digital information to the State by Saturday, June 20, 2020, and any remaining information by Monday, June 22, 2020. The digital information was to be provided by email to me and Director Liesl Eichler Clark of the Michigan Department of Environment, Great Lakes, and Energy.

6. I was surprised to learn that Enbridge had reactivated the west leg of the Line 5 dual pipelines on Saturday, June 20, 2020, not long after informing the Governor that the pipelines were shut down pending an investigation.

7. In addition to unilaterally reactivating the west leg of the Line 5 dual pipelines without consultation or apparent consideration of the Governor's request, Enbridge has, to my knowledge, only provided two engineering reports that summarize Enbridge's information and conclusions. These reports total nine pages in length, and do not include all of the information requested by the Governor, including the underlying data that went into those reports or any video footage.

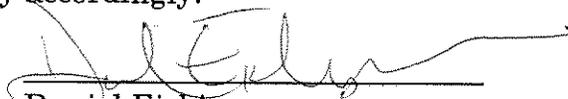
8. By reactivating the west leg of the Line 5 dual pipelines shortly after assuring the Governor that the pipelines were shut down, without consulting or sharing information with State government officials, Enbridge prevented DNR, EGLE, and other state departments from ensuring that the Great Lakes would not be threatened by this partial reactivation of the pipelines.

9. Given Enbridge's unilateral decision to reactivate the west leg of the Line 5 dual pipelines, I am not confident that Enbridge will provide the state with all of the information and meaningfully consult with relevant state agencies before it reactivates the east leg of the pipelines.

10. Should Enbridge reactivate the east leg of the Line 5 dual pipelines without first providing all relevant information in its possession to the State of Michigan, and allowing the State to review that information and confirm that it would be reasonably prudent to reactivate the pipelines, DNR, EGLE, and other state departments would be prevented from exercising their legal right to receive information from Enbridge that will allow them to ensure that the pipelines are operated in accordance with the terms of the 1953 Easement Agreement and Michigan law.

11. Finally, should Enbridge err in its conclusion that it is prudent to reactivate the Line 5 dual pipelines, and should that reactivation cause a release from the pipelines into the waters of the Straits of Mackinac, this would constitute a grave and irreparable injury to the Great Lakes and to the public trust in those waters.

12. I have personal knowledge of the facts stated in this affidavit and, if called as a witness, I am competent to testify accordingly.

  
Daniel Eichinger  
Director, Michigan Department of  
Natural Resources

Subscribed and sworn to before me  
this 22nd day of June, 2020

  
Judith L. Gibson, Notary Public  
Judith L. Gibson  
Ingham County, Michigan  
Acting in and for Ingham County  
My Commission Expires: 01/10/2025

JUDITH L. GIBSON  
NOTARY PUBLIC-STATE OF MICHIGAN  
COUNTY OF INGHAM  
My Commission Expires January 10, 2025  
Acting in the County of Ingham

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

DANA NESSEL, ATTORNEY GENERAL OF  
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**BRIEF IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY INJUNCTION**

## INTRODUCTION

On Thursday, June 18, 2020, representatives of the Defendant Enbridge entities (Enbridge) informed the State of Michigan that Enbridge had discovered new evidence of substantial damage to the Line 5 dual pipelines infrastructure. According to Enbridge, this includes damage to the coating of both pipelines, as well as jarring loose one of the anchor supports affixed to the east leg of the dual pipelines. Enbridge initially shut down operation of both pipelines.

Enbridge stated that it does not presently know what caused this damage to the Line 5 dual pipelines. But it is clear that the pipelines were impacted by a physical force powerful enough to dislodge a solid steel anchor support and damage the protective coating of the pipelines themselves. The fact that, according to Enbridge, this impact occurred approximately 220 feet below the surface of the Straits of Mackinac necessarily limits the universe of potential causes.

As set forth more fully below, Enbridge's response to this alarming occurrence has been woefully inadequate. On Friday, June 19, 2020, the Governor requested that Enbridge immediately provide the State of Michigan with all information in its possession related to this issue, with digital information provided within 24 hours and all remaining information provided no later than Monday, June 22, 2020. Despite initially stating that it would provide the requested information Enbridge has failed to provide an adequate response, providing two short engineering reports on Monday, June 22, but none of the underlying data or information that went into the reports, no video, and only the small number of

photographs included in the reports. In addition, the response failed to explain how the damage occurred and what measures will be taken to prevent a recurrence. Enbridge unilaterally reactivated the West leg of the dual pipelines on Saturday, June 20, 2020 without consulting the State, and prior to providing any of the information that the Governor requested. Later, on June 20, 2020, the Governor requested that Enbridge leave the dual pipelines shut down until an investigation into the cause of this incident and the overall risk to the Great Lakes could be completed. Enbridge has nevertheless continued operating the West leg and appears to be preparing to re-activate the East leg.

This newly discovered damage to the Line 5 dual pipelines is merely the latest in a troubling pattern of events in which the pipelines have been damaged, often without explanation, and without immediate detection or prevention by Enbridge. For example, in 2017, Enbridge belatedly disclosed several areas of damaged pipeline coating where bare metal was exposed,<sup>1</sup> despite having identified some of this damage as early as 2014.<sup>2</sup> In April 2018, the pipelines were struck by an anchor, but Enbridge did not detect the anchor strike and damage to the coatings on both pipelines until notified by a third party. Again, in May 2020, Enbridge belatedly discovered additional damage to pipeline coating, but

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<sup>1</sup> <https://www.freep.com/story/news/local/michigan/2017/11/14/enbridge-discloses-dozens-more-gaps-straits-mackinac-pipelines-protective-coating/863490001/>

<sup>2</sup> [https://www.mlive.com/news/2017/10/enbridge\\_line\\_5\\_damage\\_2014\\_de.html](https://www.mlive.com/news/2017/10/enbridge_line_5_damage_2014_de.html)

apparently does not know when and how it occurred.<sup>3</sup>

Enbridge's inadequate response to the latest incident reflects the continuation of a pattern of conduct in which Enbridge puts profits above the health and safety of the Great Lakes and ignores its due care obligation under the 1953 Easement.

It is apparent that this pattern will continue unless the Court compels Enbridge to manage the pipelines responsibly as long as they are allowed to remain in operation. To that end, a preliminary injunction is necessary to compel Enbridge to provide the State of Michigan with any and all information it possesses related to this newly discovered damage to the pipelines, to allow the State to review this information with the assistance of outside experts, and to preserve the status quo by shutting down both of the Line 5 dual pipelines until this review is complete, the cause investigated, and mitigation measures are in place.

### **STATEMENT OF FACTS**

The Court is no doubt familiar with the Line 5 dual pipelines and their history, as well as the grave harm that would be caused by a release from the pipelines. This brief will, therefore, focus only on the immediately relevant facts.

On Thursday, June 18, 2020, Enbridge representatives contacted the Directors of the Michigan Department of Natural Resources (DNR) and the Michigan Department of Environment, Great Lakes, and Energy (EGLE) via

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<sup>3</sup> <https://www.detroitnews.com/story/news/local/michigan/2020/05/26/enbridge-says-four-bare-spots-line-5-repaired/5262976002/>

telephone conference and informed them that Enbridge had discovered evidence of damage to the Line 5 dual pipelines infrastructure. (Ex A, p 1.) Specifically, on June 18, Enbridge had discovered significant damage to an anchor support attached to the east leg of the dual pipelines. (*Id.*)

This damaged anchor support is located approximately 150 feet from a portion of the pipeline where, on or about May 26, 2020, Enbridge discovered damage to the pipeline coating. (Ex A, p 1.) Enbridge informed the State that it had shut down both legs of the pipelines and was in the process of gathering information via divers and the use of a remotely operated vehicle (ROV). (*Id.*)

In a letter dated June 19, 2020, the Governor requested that Enbridge provide the DNR and EGLE Directors with all information in its possession related to this incident, including, but not limited to, engineering reports, photographs, video, and any other demonstrative evidence of the damage. (*Id.*, pp 1–2.) The Governor requested that immediately available digital information be provided within 24 hours, and that the remaining information be provided no later than Monday, June 22, 2020, and supplemented as necessary thereafter. (*Id.*, p 2.)

The next day, on June 20, 2020, Enbridge’s CEO Al Monaco responded with a letter stating that the anchor support had “shifted position,” that this was “an issue affecting that anchor support assembly and not the pipeline itself,”<sup>4</sup> and that, “As a preliminary precaution, we immediately shut down both the east and west legs of

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<sup>4</sup> Mr. Monaco’s letter did not mention that, as previously noted, this damaged anchor support was located a mere 150 feet from recently discovered damage to the coating of the pipeline itself. (Ex A, p 1.)

Line 5” and promptly notified the State of Michigan and federal regulators. (Ex B, p 1.) Mr. Monaco further stated that, “Our current efforts to assess the fitness for service of the dual pipelines includes deployment of divers to inspect the area around the damaged support assembly and the use of a remotely operated vehicle (ROV) to inspect the entire pipeline, both the east and west legs.” (*Id.*)

At approximately 1:59 p.m. that same day, shortly after Mr. Monaco’s letter was received electronically by the Governor, Enbridge informed the DNR and EGLE Directors that it would reactivate the west leg of the dual pipelines at approximately 2:00 p.m. (Ex C, p 1.) The west leg of the pipelines was reactivated without consulting the State of Michigan or providing any of the information that Enbridge had agreed to provide. Indeed, it was reactivated less than 48 hours after Enbridge informed the State that it was shut down. (*Id.*) This reactivation appears to have occurred with no understanding of the cause of the damage to the pipeline infrastructure, no understanding of how the source of the damage escaped Enbridge’s detection and prevention measures, and no determination by any party other than Enbridge itself as to whether it was prudent to resume operations.

The Governor responded with another letter that same day, June 20, 2020. (Ex C.) In this letter, the Governor stated:

Given the gravity of this matter, I was taken aback to learn the company has unilaterally resumed operation of the west leg without even opportunity for discussion. At this moment, Enbridge is pumping crude through the Great Lakes on state-owned bottomlands without any explanation for the cause of this damage to the pipeline structure and no assurance that Enbridge has taken sufficient steps to mitigate future harm. This disregard for the safety and well-being of our Great

Lakes, and Enbridge's due care obligations under the 1953 Easement, is unacceptable.

(*Id.*, p 1.)

The Governor then requested that Enbridge immediately shut down the dual pipelines until the matter could be investigated and preventative measures put in place. (*Id.*) The Governor requested that this involve a full report prepared by Enbridge and reviewed by the State or a third party selected by the State. (*Id.*, p 2.)

To date, Enbridge has failed or refused to fully respond to the Governor's request for information. As noted above, Enbridge did not provide any information within the 24 hour timeline requested by the Governor, and to date has provided only the two short engineering reports, see Exhibits D and E,<sup>5</sup> without providing any of the underlying data or any video footage, and only the small handful of photographs included in the reports. Additionally, the west leg of the dual pipelines remains active despite there being no apparent indication of precisely what caused the damage to the pipelines, how it evaded Enbridge's detection and prevention measures, or what steps need to be taken to prevent future harm from recurring.

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<sup>5</sup> Exhibits D and E were provided to the State by Enbridge and were stamped "privileged and confidential." The basis for Enbridge's assertion of confidentiality is unclear at this time. However, due to time constraints and out of an abundance of caution, Exhibits D and E will be filed separately once the State determines whether it is necessary to file them under seal.

## ARGUMENT

- I. Enbridge is legally required to produce any and all information it possesses related to the newly discovered damage to the Line 5 dual pipelines. Additionally, the Court has the authority to compel Enbridge to produce this information, and to enjoin the operation of the pipelines until an independent review confirms that it is safe to resume operation.**

The relief sought in this motion is available under four legal bases.

Enbridge's conduct constitutes violations of both the 1953 Easement that authorized the placement of the Line 5 dual pipelines in the Straits of Mackinac as well as a subsequent contract between Enbridge and the State of Michigan commonly referred to as the "Second Agreement." (Exs F and G.) The Court has the power to grant injunctive relief to compel compliance with these agreements. Additionally, injunctive relief is available under count II, public nuisance, and count III, Michigan Environmental Protection Act, of the complaint.

- A. The 1953 Easement requires Enbridge to produce the information that it has thus far withheld, and provides a legal basis for the Court to compel Enbridge to produce that information and to enjoin operation of the dual pipelines until Enbridge affirmatively establishes that it is reasonably prudent to resume operations.**

The 1953 Easement itself contains provisions that require Enbridge to provide the information requested in this motion.<sup>6</sup> First, the Easement requires that Enbridge, "in its exercise of rights under this easement, including its

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<sup>6</sup> While this lawsuit challenges the validity of the 1953 Easement, a contract is presumed to be valid and binding until a court declares otherwise. Therefore, until this matter is resolved and so long as Enbridge continues to operate the dual pipelines, Enbridge is bound by the Easement's terms.

designing, constructing, testing, operating, maintaining . . . said pipelines, shall follow the usual necessary, and proper procedures for the type of operation involved, and at all times shall exercise the due care of a reasonably prudent person for the safety and welfare of all persons and of all public and private property.” (Ex F, pp 3–4 ¶ A.)

Second, the Easement provides that the Grantor can inspect, at all reasonable times, the pipelines, appurtenances, and fixtures authorized by the Easement. (*Id.*, p 12 ¶ O.)

Here, Enbridge has thus far withheld information in its possession related to the pipelines, appurtenances, and fixtures, including the damaged anchor support. While Exhibits D and E constitute short compilations and analyses of information performed by Enbridge or its agents, they do not satisfy the Governor’s request for *all* information Enbridge possesses. The purpose of this request is, among other things, to allow the State to conduct a full independent review of all of the available facts, rather than short summary reports prepared by Enbridge itself.

Enbridge’s inadequate response to the Governor’s request violates the “due care” obligation that requires Enbridge to exercise the care of a reasonably prudent person. The Court has the power to grant injunctive relief to compel compliance with the terms of the Easement, including that Enbridge uphold its due care obligations by taking the reasonably prudent steps of sharing information related to damage to the pipelines’ infrastructure. Additionally, the Court has the power to determine that a reasonably prudent person would cease operations of the dual

pipelines until that information can be reviewed, and until Enbridge affirmatively establishes that it is reasonably prudent to resume normal operations.

**B. The “Second Agreement” between the State of Michigan and Enbridge requires Enbridge to produce the information that it has thus far withheld and provides a legal basis for the Court to compel Enbridge to produce that information.**

On October 2, 2018, the State of Michigan, DNR, and EGLE entered into a contract with Enbridge commonly referred to as the Second Agreement. (Ex E.)

The Second Agreement specifically provided that:

Enbridge will work cooperatively with the State to: (a) make available to the State’s representative data and other materials generated under this Second Agreement, including but not limited to geologic, engineering, or other technical information concerning Line 5 located in the State of Michigan and Enbridge’s implementation of the measures described herein; (b) *all requested information in Enbridge’s possession concerning the operation, integrity management, leak detection, and emergency preparedness for Enbridge’s Line 5 pipeline located in the State of Michigan.*

(Ex E, p 4 ¶ I.A.2.)

The Attorney General has the ability to enforce this contractual provision against Enbridge, on behalf of the people of the State of Michigan, in this lawsuit. While two of the signatories to the Second Agreement, DNR and EGLE, are not parties to this lawsuit, the State of Michigan itself is a signatory, and the Attorney General brings this action on behalf of the people of the State of Michigan.

Additionally, the Second Agreement was expressly entered into for the benefit of the people of the State of Michigan.<sup>7</sup> Therefore, even if they were not a

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<sup>7</sup> See, e.g., the following passage: “WHEREAS, the State and Enbridge recognize that the Straits Crossing and the St. Clair River Crossing (collectively ‘Crossings’)

signatory, the people of the State of Michigan would collectively be an intended third party beneficiary of the Second Agreement, and may enforce its provisions in court. MCL 600.1405; *Schmalfeldt v North Pointe Ins Co*, 469 Mich 422, 427–428 (2003), internal citations omitted.

Here, the State of Michigan has requested precisely the sort of information that Enbridge is obligated to provide, and Enbridge’s partial response is simply inadequate. The information requested by the Governor is crucial to determining whether, as the complaint alleges, Line 5 presents an imminent threat of pollution, impairment, or destruction of natural resources or the public trust in those natural resources, and whether Line 5 presents an imminent threat of a public nuisance. The Court may, therefore, enter an injunction requiring that Enbridge immediately produce all information in its possession related to this newly discovered damage to the pipelines and their infrastructure.

**C. The common law doctrine of public nuisance provides an independent basis for the Court to preserve the status quo and prevent irreparable harm to the Great Lakes by enjoining the operation of the pipelines until an independent review confirms that it is safe.**

Count II of the complaint in this matter alleges that Enbridge’s operation of the Line 5 dual pipelines in the Straits of Mackinac creates a public nuisance because it constitutes a continuing, unreasonable risk of catastrophic harm to

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are located in the Great Lakes and connecting waters that include *and are in proximity to unique ecological and natural resources that are of vital significance to the State and its residents, to tribal governments and their members, to public water supplies, and to the regional economy.*” (Ex F, p 2, emphasis added.)

public rights. (6/27/19 Complaint, Count II pp 25–26.) The fact that there is evidence of some new damage to the pipelines, discovered barely two years after the April 1, 2018 anchor strike, highlights the gravity of this risk.

The Court has the power to grant injunctive relief to abate a public nuisance. MCL 600.2940(1). Here, where there is evidence of damage to the Line 5 pipelines, but where Enbridge refuses or otherwise fails to share all of its information related to that damage, this creates an unreasonable risk that constitutes a public nuisance which this Court should abate.

**D. The Michigan Environmental Protection Act provides an independent basis for the Court to preserve the status quo and prevent irreparable harm to the Great Lakes by enjoining the operation of the pipelines until an independent review confirms that it is safe.**

Count III of the complaint in this matter alleges a violation of Part 17, Michigan Environmental Protection Act (MEPA), of the Natural Resources and Environmental Protection Act, MCL 324.1701 *et seq.* (6/27/19 Complaint, Count III, pp 26–27.)

MEPA specifically provides that the Attorney General may seek, and the Court may award, equitable relief to prevent the pollution, impairment, or destruction or natural resources or the public trust in those natural resources. MCL 324.1701(1). Injunctive relief is equitable in nature. *Dep't of Env't'l Quality v Gomez*, 318 Mich App 1, 31–34 (2016).

As alleged in the complaint in this matter, a release of oil from Line 5 would undoubtedly pollute, impair, or destroy the natural resources of the State of

Michigan and the public trust in those resources. Here, where there is evidence of damage to the Line 5 pipelines, but where Enbridge refuses or otherwise fails to share all of its information related to that damage, injunctive relief under MEPA is necessary and appropriate.

## **II. A preliminary injunction is necessary to preserve the status quo and to prevent irreparable harm to the Great Lakes.**

The purpose of a preliminary injunction is to preserve the status quo, so that upon hearing the rights of the parties may be determined without injury to either. *Psychological Services of Bloomfield, Inc. v Blue Cross Blue Shield of Michigan*, 144 Mich App 182, 185 (1985), citing *Gates v Detroit M&R Co*, 151 Mich 548, 551 (1908). The status quo that must be preserved is the “last actual, peaceable, nonconstested status” which preceded the pending controversy. *Id.*, citing *Steggles v National Discount Corp*, 326 Mich 44, 51 (1949).

### **A. Standard of Review**

Michigan courts apply a four-factor test in determining whether to issue a preliminary injunction. The Supreme Court has held:

Whether a preliminary injunction should issue is determined by a four-factor analysis: harm to the public interest if an injunction issues; whether harm to the applicant in the absence of a stay outweighs harm to the opposing party if a stay is granted; the strength of the applicant’s demonstration that the applicant is likely to prevail on the merits; and demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not granted.

*Michigan State Employees Ass’n v Dep’t of Mental Health*, 421 Mich 152, 157–158 (1984).

Whether to issue a preliminary injunction rests in the discretion of the trial court. *State v McQueen*, 493 Mich 135, 146 (2013).

Here, the four factors set forth by the Supreme Court militate in favor of issuing a preliminary injunction to prevent irreparable harm to the Great Lakes by preserving the status quo by ceasing the recently resumed operation of the west leg and preventing the reactivation of the east leg of the Line 5 dual pipelines until an independent review has confirmed that it is safe.

**B. A preliminary injunction is necessary and appropriate to ensure that the Line 5 dual pipelines remain inactive until an independent review is complete, the cause investigated, and mitigation measures are in place .**

Here, the last actual, peaceable, noncontested status was that the Line 5 dual pipelines were shut down pending an investigation. (Exs A and B.) That was the status that existed before Enbridge unilaterally reactivated the west leg of the pipelines almost immediately after informing the Governor that both legs had been shut down pending an investigation. A preliminary injunction restoring and preserving that status quo is necessary given the gravity of the harm that will be suffered if Enbridge's rush to resume pipeline operations without a full investigation and impartial review proves misguided.

**1. A preliminary injunction serves the public interest.**

It is beyond dispute that the public interest is best served by taking appropriate measures to prevent a release from Line 5 into the waters of the Straits of Mackinac. Given the facts set forth above, the public clearly has a strong interest

in an order compelling Enbridge to provide all information related to this issue to the State, for the State to review that information with the assistance of outside experts, and for the pipelines to remain shut down until that review confirms that it is reasonably prudent to resume operations.

**2. Any harm caused to Enbridge by a preliminary injunction is heavily outweighed by the risk of harm to the public if a preliminary injunction is not entered.**

Enbridge will not be harmed at all by being compelled to share its information with the State. Indeed, Enbridge agreed to do so in the Second Agreement, and appeared to agree to do so again in the June 20, 2020 letter from its CEO. Additionally, Enbridge will not be harmed by having its information reviewed by the State, nor by outside experts chosen by the State.

The only potential harm to Enbridge would be the financial impact of a temporary shutdown of the Line 5 pipelines. But that harm is dwarfed by the potential harm to the public if there is a release of oil from the pipelines. Therefore, a preliminary injunction requiring Enbridge to provide all information it possesses to the State for a full review and requiring that the pipelines be shut down until this review is complete is appropriate.

**3. The Attorney General is likely to succeed on the merits of this action.**

The Court is familiar with the merits of this lawsuit, so in the interest of economy they will not be repeated here. This new information only serves to increase the Attorney General's likelihood of success on the merits. Enbridge's

primary defense to counts II and III of the complaint, public nuisance and MEPA, hinge on the notion that this exact occurrence—large force impact to the Line 5 dual pipelines infrastructure—is statistically unlikely.

Specifically, Enbridge has argued that count II, public nuisance, should be dismissed because it is “impermissibly speculative,” and that count III, MEPA, should be dismissed because the Attorney General is unable to demonstrate that a release from the pipelines is likely to occur. (Defendants’ 9/16/19 Brief in Support of Motion for Summary Disposition, pp 36–43.)

This alarming new occurrence proves that Enbridge’s arguments based on likelihood are divorced from reality. As the Court is aware, a massive anchor strike damaged the pipelines infrastructure on April 1, 2018. Now, approximately two years later (though no one is currently able to say when with any precision), there is evidence of another large force impact. This directly undercuts Enbridge’s arguments on these counts and demonstrates that the merits of the Attorney General’s claims are well founded.

Moreover, the Attorney General is likely to succeed on the merits of the specific relief requested in this motion. As set forth above, the due care obligations of the 1953 Easement, the information sharing requirements of the Second Agreement, the common law of public nuisance and MEPA all provide legal support for the interim relief requested here: (a) restoring the last uncontested status quo by ordering Enbridge to cease operation of the west leg of the Straits Pipelines and by maintain the current shutdown of the east leg pending disclosure of and

independent review of the requested information; and (b) ordering Enbridge to immediately and fully disclose the requested information regarding the nature, extent and causes of the most recent damage to the pipeline infrastructure.

**4. There is a grave risk of irreparable harm that can only be prevented by the entry of a preliminary injunction.**

The gravity of the threat to the Great Lakes cannot be overstated. It is beyond dispute that a release from the Line 5 dual pipelines would constitute irreparable harm. It is also clear that, absent an injunction, Enbridge will not honor its legal duty to share all of its information with the State. Given Enbridge's troubling history, combined with its indifferent and inadequate response to this alarming incident, a preliminary injunction is necessary to ensure that the available information is vetted by the State or by experts of the State's choosing.

**CONCLUSION AND RELIEF REQUESTED**

Despite Enbridge's protestations that anchor strikes or similar large force impacts to the Line 5 dual pipelines are highly unlikely, the Court now has before it evidence of a second substantial strike to the pipelines in approximately two years. At present, no one is able to say whether this second impact was caused by an anchor strike or some other source, which itself is troubling. Enbridge's prevention and detection measures have failed to prevent or detect the source of this damage, and that failure has created a risk of irreparable harm to the Great Lakes. Enbridge's response has been to largely shrug off its information-sharing responsibilities, providing only limited summary reports rather than the full suite

of information in its possession, and promptly resume operation of the west leg of the pipelines almost immediately after telling the Governor that the pipelines had been shut down pending an investigation.

A preliminary injunction is necessary to ensure that Enbridge is not the only party with access to the facts, and that an independent review verifies Enbridge's conclusions. Further, a preliminary injunction is necessary to ensure that Enbridge cannot resume pipeline operations until an independent review confirms that it is reasonably prudent to do so.

Respectfully submitted,

Dana Nessel  
Attorney General

/s/ Daniel P. Bock  
S. Peter Manning (P45719)  
Robert P. Reichel (P31878)  
Daniel P. Bock (P71246)  
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Dated: June 22, 2020

LF: Enbridge Straits (AG v)/AG #2019-0253664-B-L/Brief in Support of Motion for Preliminary Injunction 2020-06-22

# EXHIBIT A



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

June 19, 2020

Al Monaco  
CEO, Enbridge, Inc.  
200, Fifth Avenue Place  
425 – 1st Street S.W.  
Calgary, Alberta  
Canada T2P 3L8

Dear Mr. Monaco,

Yesterday evening your company informed the State of Michigan that an anchor support on one of the Line 5 dual pipelines running along the bottomlands of the Straits of Mackinac had incurred significant damage. This support lies approximately 150 feet from a section of the pipeline where damage to the pipeline coating was discovered on or around May 26, 2020. At this point, as I understand it, the cause for this damage to the pipeline support is unknown, although it appears the anchor support was subject to considerable force. After discovering the damaged anchor support, Enbridge shut down the Line 5 pipeline and is gathering more information through divers, the use of a remotely operated vehicle (ROV), and other means. The pipeline remains shut down as Enbridge continues to gather more information.

The information I have received about this incident leaves many unanswered questions as to the cause of this damage, the catastrophe that may have been narrowly avoided, and the threats that may remain as a result of the damaged infrastructure. As you know, under the 1953 easement Enbridge holds an ongoing duty of “due care” to the State of Michigan in the “operating” and “maintaining” of the dual pipelines. There can be no question this duty obligates Enbridge to proceed with the utmost caution and care at this moment.

As a first step toward fulfilling that duty, I ask that Enbridge provide Director Liesl Clark, Department of Environment, Great Lakes, and Energy, and Director Dan Eichinger, Department of Natural Resources, all information available to Enbridge about this incident. This includes, but is not limited to, all engineering reports, photographs, video,

and other demonstrative evidence of the damage. Please provide this information no later Monday, June 22, 2020 and supplement that disclosure with all further information about the incident as it becomes available. Information in digital form and available immediately should be provided within 24 hours to Director Eichinger ([EichingerD@michigan.gov](mailto:EichingerD@michigan.gov)) and Director Clark ([ClarkL20@michigan.gov](mailto:ClarkL20@michigan.gov)). In addition, I ask that Enbridge provide affirmative evidence, including appropriate diagnostic testing, that establishes the integrity of the dual pipelines in the Straits of Mackinac.

As Governor of the State of Michigan – the Great Lakes State – I carry an immense burden to protect this priceless treasure that defines the contours of our state and our way of life. I anticipate and expect your full cooperation.

Sincerely,



Gretchen Whitmer  
Governor

cc: Liesl Clark, Director, Department of Environment, Great Lakes, and Energy, State of Michigan  
Dan Eichinger, Director, Department of Natural Resources, State of Michigan  
Alan K. Mayberry, Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation

# EXHIBIT B

June 20, 2020

Governor Gretchen Whitmer  
George W. Romney Building  
111 South Capitol Avenue  
Lansing, Michigan USA 48909

Dear Governor Whitmer,

Thank you for your letter of June 19, 2020, which I received yesterday evening.

As you know from our earlier discussions with your staff and regulatory agencies, on June 18, 2020 Enbridge observed as part of our seasonal maintenance work on Line 5 a screw anchor assembly on the east leg that had shifted from its original position. This is an issue affecting that anchor support assembly and not the pipeline itself.

As a preliminary precaution, we immediately shut down both the east and west legs of Line 5 and promptly notified the State of Michigan and our federal regulator, the Pipeline and Hazardous Materials Safety Administration (PHMSA), as well as the U.S. Environmental Protection Administration (EPA).

During the morning of June 19, 2020, we briefed your administration and staff on what is currently known about the damage to the support assembly and related background, and responded to questions asked by the officials. We also fully briefed PHMSA on June 19, 2020. We are committed to keep the State of Michigan and PHMSA informed of new information as it develops.

Our current efforts to assess the fitness for service of the dual pipelines includes deployment of divers to inspect the area around the damaged support assembly and the use of a remotely operated vehicle (ROV) to inspect the entire pipeline, both the east and west legs. We have and will continue to discharge our duty of due care under the 1953 easement that you referenced in your letter.

As part of our assessment process, we are committed to sharing what we learn about this incident with PHMSA and the State of Michigan. Mr. Michael Koby, our Vice President of U.S. Operations, will provide the information you requested to Director Liesl Clark and Director Dan Eichinger.

Finally, we share your commitment to keeping the Great Lakes safe. Mr. Koby and our team will give this matter their highest priority.

Sincerely,

A handwritten signature in black ink, appearing to read "Al Monaco". The signature is fluid and cursive, with a long horizontal stroke at the end.

Al Monaco

# EXHIBIT C



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

June 20, 2020

Al Monaco  
CEO, Enbridge, Inc.  
200, Fifth Avenue Place  
425 – 1st Street S.W.  
Calgary, Alberta  
Canada T2P 3L8

Dear Mr. Monaco,

I received your letter earlier today responding to my correspondence yesterday evening about the damage to the anchor support on the east leg of the Line 5 dual pipelines that run through the Straits of Mackinac. Thank you for your commitment to provide the information I requested; I trust we will receive all digital information today.

My understanding is that at 1:59 pm this afternoon, shortly after your letter arrived, Enbridge notified Directors Eichinger and Clark of the following by email:

As we have verified that the west leg is not affected, we will resume normal operations on that line today at approximately 2:00 PM Eastern Time. However, the east leg will remain shut down.

Given the gravity of this matter, I was taken aback to learn the company has unilaterally resumed operation of the west leg without even opportunity for discussion. At this moment, Enbridge is pumping crude through the Great Lakes on state-owned bottomlands without any explanation for the cause of this damage to the pipeline structure and no assurance that Enbridge has taken sufficient steps to mitigate future harm. This disregard for the safety and well-being of our Great Lakes, and Enbridge's due care obligations under the 1953 Easement, is unacceptable.

I ask that Enbridge immediately shut down the dual pipelines that run through the Straits of Mackinac until this incident is investigated, assessed, and preventive measures are put

in place. In addition to responding to my prior information request, I ask that Enbridge provide a full report as to the cause of this damage and what measures Enbridge will put in place to prevent this harm from happening again. Once the state, or a third-party selected by the state, has reviewed this information, we can discuss when normal operations may resume.

Sincerely,



Gretchen Whitmer  
Governor

cc: Liesl Clark, Director, Department of Environment, Great Lakes, and Energy, State of Michigan  
Dan Eichinger, Director, Department of Natural Resources, State of Michigan  
Alan K. Mayberry, Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation

# EXHIBIT D

(withheld pending  
confidentiality review)

# EXHIBIT E

(withheld pending  
confidentiality review)

# EXHIBIT G

**SECOND AGREEMENT BETWEEN THE STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY, AND MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND ENBRIDGE ENERGY, LIMITED PARTNERSHIP, ENBRIDGE ENERGY COMPANY, INC., AND ENBRIDGE ENERGY PARTNERS, L.P.**

This Second Agreement is entered between the State of Michigan, the Michigan Department of Environmental Quality, and the Michigan Department of Natural Resources (collectively referred to herein as “the State”), AND Enbridge Energy, Limited Partnership, Enbridge Energy Company, Inc., formerly known as Lakehead Pipe Line Company, Inc., and Enbridge Energy Partners, L.P. (collectively referred to herein as “Enbridge”) concerning those segments of Enbridge’s Line 5 pipeline (“Line 5”) that are located within the State of Michigan. This Second Agreement results from, and is intended to fulfill, the parties’ obligations under Paragraph I.H. of the first Agreement between the State and Enbridge, entered November 27, 2017 (“First Agreement”), in which the parties agreed to pursue a further agreement to address Line 5’s crossing of the Straits of Mackinac (“Straits”).

WHEREAS, the segments of Line 5 located within Michigan extend 547 miles, from the border of Wisconsin near Ironwood, Michigan to Marysville, Michigan, where it crosses the St. Clair River to the border with Sarnia, Ontario (“St. Clair River Crossing”);

WHEREAS, the segments of Line 5 located within Michigan must be operated and maintained in compliance with all applicable laws that are intended to protect the public health, safety, and welfare and prevent pollution, impairment, or destruction of the natural resources of the State of Michigan, including the unique resources of the Great Lakes;

WHEREAS, the continued operation of Line 5 through the State of Michigan serves important public needs by providing substantial volumes of propane to meet the needs of Michigan citizens, supporting businesses in Michigan, and transporting essential hydrocarbon products, including Michigan-produced oil to Michigan and regional refineries and manufacturers;

WHEREAS, the State issued an “Easement” to Lakehead Pipeline Company, Inc. (“Lakehead”), subsequently renamed Enbridge Energy Company, Inc., on April 23, 1953 pursuant to Act No. 10, PA 1953 “for the purpose of erecting, laying, maintaining and operating” an approximate 4-mile segment of Line 5 across the Straits upon determining that such crossing would “be of benefit to all of the people of the State of Michigan and in furtherance of the public welfare”;

WHEREAS, in accordance with the Easement, Enbridge constructed two parallel pipelines, each 4.09-miles long (referred to herein as the “Dual Pipelines”) across the Straits in

1953 (referred to as the “Straits Crossing”), and since that time continues to operate and maintain such pipelines consistent with the terms of the Easement as part of Line 5 to transport light crude oil, synthetic crude oil, and natural gas liquids;

WHEREAS, on September 3, 2015, Enbridge and the State entered an agreement under which Enbridge affirmed that it does not and will not transport heavy crude oil through the Dual Pipelines;

WHEREAS, the State and Enbridge recognize that the Straits Crossing and the St. Clair River Crossing (collectively “Crossings”) are located in the Great Lakes and connecting waters that include and are in proximity to unique ecological and natural resources that are of vital significance to the State and its residents, to tribal governments and their members, to public water supplies, and to the regional economy, and the Crossings are also present in important infrastructure corridors;

WHEREAS, the State and Enbridge recognize that other important ecological and natural resources are located near other segments of Line 5 that cross or approach other waters of the State that are also of vital significance to the State and its residents, to tribal governments and their members, to public water supplies, and to the regional economy;

WHEREAS, in the First Agreement, the State and Enbridge established additional measures with respect to certain matters related to Enbridge’s stewardship of Line 5 within Michigan and the transparency of its operation;

WHEREAS, in accordance with Paragraph I.A. of the First Agreement, Enbridge has enhanced its coordination with the State concerning the operation and maintenance of Line 5 located in the State of Michigan;

WHEREAS, in accordance with Paragraph I.B. of the First Agreement, Enbridge timely requested pre-application consultations and applied for all US and Canadian authorizations and approvals necessary to replace Line 5’s crossing of the St. Clair River by the use of a horizontal directional drill method;

WHEREAS, under the circumstances specified in Paragraph I.C. and Appendix 1 to the First Agreement, Enbridge has discontinued Line 5 operations in the Straits during sustained adverse weather conditions;

WHEREAS, Enbridge has completed its evaluation of underwater technologies to enhance leak detection and technologies to assess coating condition of the Dual Pipelines and has

submitted the results of such evaluations to the State, in accordance with Paragraph I.D. of the First Agreement;

WHEREAS, Enbridge has submitted to the State an evaluation of measures to mitigate potential vessel anchor strike, in accordance with Paragraph I.E. of the First Agreement;

WHEREAS, Enbridge has submitted to the State an evaluation of alternatives to replace the Dual Pipelines, in accordance with Paragraph I.F. of the First Agreement;

WHEREAS, Enbridge has worked in coordination with the State to identify and evaluate water crossings by Line 5 and to assess measures to minimize the likelihood and/or consequences of a release at each water crossing location, in accordance with Paragraph I.G. of the First Agreement;

WHEREAS, the evaluations carried out pursuant to the First Agreement have identified near-term measures to enhance the safety of Line 5, and a longer-term measure – the replacement of the Dual Pipelines – that can essentially eliminate the risk of adverse impacts that may result from a potential release from Line 5 at the Straits;

WHEREAS Enbridge has recently implemented and committed to continue additional measures to enhance the safety of Line 5; and

WHEREAS, the State acknowledges that the stipulations specified in this Second Agreement are intended to further protect ecological and natural resources held in public trust by the State of Michigan, and that the terms of this Second Agreement will both protect the ecological and natural resources held in public trust by the State and provide clarity as to State's expectations concerning the safety, integrity, and operation of Line 5.

NOW, THEREFORE, the parties agree as set forth below.

## **I. STIPULATIONS**

Enbridge and the State agree to the following measures, which are designed, among other things, to increase coordination between the State and Enbridge concerning the operation and maintenance of Enbridge's Line 5 pipeline located in the State of Michigan, including further enhancing the safety of its operation and reducing the risk of adverse impacts that may result from a potential release from Line 5 at the Straits in the interest of the citizens of Michigan.

A. Continued Coordination Between the State and Enbridge: In order to continue coordination with the State concerning the operation and maintenance of Line 5 located in the

State of Michigan, and to facilitate the implementation of the measures described at Paragraphs B-K below, the parties agree as follows:

1. The State will further provide designated representatives to participate in the stewardship and transparency consultations and communications to be carried out under this Second Agreement.
2. Enbridge will work cooperatively with the State to: (a) make available to the State's representative data and other materials generated under this Second Agreement, including but not limited to geologic, engineering, or other technological information concerning Line 5 located in the State of Michigan and Enbridge's implementation of the measures described herein; and (b) all requested information in Enbridge's possession concerning the operation, integrity management, leak detection, and emergency preparedness for Enbridge's Line 5 pipeline located in the State of Michigan. The State recognizes, and to the extent provided by applicable law will accommodate, Enbridge's interest in protecting from disclosure critical energy infrastructure and other confidential information protected from disclosure by law.
3. Enbridge and representatives designated by the State agree to meet semi-annually to discuss any changes to engineering parameters, risks, new technologies, and innovations pertaining to the operation and maintenance of Line 5 located within the State of Michigan. One such semi-annual meeting shall include subject matter experts from Enbridge and the State to review matters relating to pipeline integrity, emergency response and preparedness for Line 5 located within the State of Michigan.

B. Replacement of Line 5 St. Clair River Crossing: Consistent with Paragraph I.B. of the First Agreement, Enbridge timely met its obligations under the First Agreement by filing applications seeking all state, US federal and Canadian authorizations and approvals necessary for the replacement of the St. Clair River Crossing by use of a horizontal directional drill ("HDD") method. No later than 180 days after obtaining all state, US federal, and Canadian authorizations and approvals necessary to replace Line 5's crossing of the St. Clair River by the use of a HDD method, Enbridge will initiate the work identified in the applications necessary to replace that segment of Line 5.

C. Discontinuation of Line 5 Operations in the Straits During Sustained Adverse Weather Conditions: Until such time that the Dual Pipelines are replaced, Enbridge has and will continue to temporarily shut-down the operation of the Dual Pipelines while "Sustained Adverse

Weather Conditions,” as that term is defined in Appendix 1 to this Second Agreement, remain in effect in the Straits, using the procedure set forth in Appendix 1. Additionally, should median wave heights in the Straits over a continuous 60-minute period exceed 6.5 feet in height based upon “Near-real time Data” or in its absence, “Modeled Data,” as those terms are defined in Appendix 1, Enbridge shall ensure that at least one Enbridge employee is available and capable of traveling to the Line 5 North Straits valve station in less than 15 minutes. Enbridge will notify the State when the Line 5 Dual Pipelines have been shut down due to “Sustained Adverse Weather Conditions” and again when the Line 5 Dual Pipelines are restarted. Further, the State is planning to install radar technology that will provide additional near real-time data regarding wave height at the Straits. The State and Enbridge agree that when those data become available, they will be shared with Enbridge and applied to the procedures set forth in Appendix 1 and this Paragraph. Any modification to Appendix 1 to account for the use of radar technology data shall not require a written Amendment to this Second Agreement under Section II below.

D. Underwater Technologies to Enhance Leak Detection and Technologies to Assess Coating Condition of the Dual Pipelines: Based upon the evaluation performed pursuant to Paragraph I.D. of the First Agreement, Enbridge will conduct a Close Interval Survey (“CIS”) of the Dual Pipelines every two years, so long as the Dual Pipelines remain in operation. Enbridge plans to conduct a CIS on the Dual Pipelines in 2018, and shall complete the next CIS within two calendar years from the date on which that CIS is conducted by Enbridge, and then every two calendar years thereafter.

E. Implementation of Measures to Mitigate Potential Vessel Anchor Strike: The United States Coast Guard (“Coast Guard”) has proposed the establishment of a Regulated Navigation Area pursuant to 33 CFR 165 in the Straits of Mackinac that would prohibit vessels from anchoring or loitering within that Area without Coast Guard authorization. 83 Federal Register 37780 (August 2, 2018). In order to assist the Coast Guard in monitoring compliance with that regulation, Enbridge agrees to provide one-time funding of up to \$200,000 to be used for the acquisition and installation of video cameras at the Straits.

F. Replacement of Dual Pipelines in a Straits Tunnel: Pursuant to Paragraph I.F. of the First Agreement, Enbridge prepared and submitted to the State the report entitled *Alternatives for replacing Enbridge’s dual Line 5 pipelines crossing the Straits of Mackinac* (June 15, 2018) (“Alternatives Analysis”). That Alternatives Analysis concluded that construction of a tunnel beneath the lakebed of the Straits connecting the upper and lower peninsulas of Michigan, and the placement in the tunnel of a new oil pipeline, is a feasible alternative for replacing the Dual Pipelines, and that alternative would essentially eliminate the risk of adverse impacts that may result from a potential oil spill in the Straits (hereinafter “Straits Tunnel”). The State and Enbridge agree to promptly pursue further agreements discussed under Paragraph I.G below for

the design, construction, operation, management, and maintenance of the Straits Tunnel in which a replacement for the Dual Pipelines could be located (“Line 5 Straits Replacement Segment”).

G. Further Agreements for a Straits Tunnel: The State has proposed that, together with housing the Line 5 Straits Replacement Segment, the Straits Tunnel could accommodate multiple utilities, including but not necessarily limited to: electric transmission lines, and facilities for transmitting data and telecommunications (collectively “Utilities”). The State and Enbridge agree to initiate discussions, as soon as practicable, to negotiate a public-private partnership agreement with the Mackinac Bridge Authority (“Authority”) with respect to the Straits Tunnel for the purpose of locating the Line 5 Straits Replacement Segment and, to the extent practicable, Utilities in that Tunnel (hereinafter “Tunnel Project Agreement”). The Tunnel Project Agreement shall include provisions under which the Authority will provide property necessary for the construction of the Straits Tunnel, in return for which Enbridge would: (a) fund the design and construction of the Straits Tunnel; (b) construct the Straits Tunnel; and (c) construct the Line 5 Straits Replacement Segment to be located within the Tunnel. Such agreement shall also provide that the Authority shall: (a) obtain or support Enbridge in obtaining the necessary permits, authorizations, or approvals necessary for the construction and operation of the Tunnel and the Line 5 Straits Replacement Segment; and (b) upon completion of the construction of the Straits Tunnel, the Authority shall assume ownership of the Straits Tunnel. Simultaneous with the execution of such agreement, the Authority would execute a lease or other agreements to: (a) authorize Enbridge’s use of the Straits Tunnel for the purpose of locating the Line 5 Straits Replacement Segment for as long as the Line 5 Straits Replacement Segment shall be in operation by Enbridge; (b) provide that Enbridge will operate and maintain the Straits Tunnel during the term of the lease on terms to be agreed; and (c) specify the conditions under which Utilities may gain access to the Straits Tunnel. Provided that the agreements discussed in this Paragraph I.G. are executed by the Authority and Enbridge, the State and Enbridge would simultaneously enter into an agreement expressly confirming Enbridge’s rights to operate the Dual Pipelines under the terms of the Easement during the construction of the Straits Tunnel and Line 5 Replacement Straits Segment, subject to compliance with the terms of the agreements described in Paragraph I.G. and applicable laws. Any failure to reach the further agreements contemplated by this Paragraph I.G. shall not alter any existing rights Enbridge has under the Easement.

H. Permanent Deactivation of the Dual Pipelines: Enbridge agrees that following completion of the Straits Tunnel and after the Line 5 Straits Replacement Segment is constructed and placed into service by Enbridge within the Straits Tunnel, Enbridge will permanently deactivate the Dual Pipelines. Consistent with Paragraphs E, H, and Q of the Easement, the procedures, methods, and materials for replacement, relocation, and deactivation of the Dual Pipelines are subject to the written approval of the State, which the State agrees shall not be unreasonably withheld. At a minimum, any portion of the Dual Pipelines that remains in place

after deactivation shall be thoroughly cleaned of any product or residue thereof and the ends shall be permanently capped to the satisfaction of the State, which shall not be unreasonably withheld. The State and Enbridge agree that decisions regarding the method of deactivation, including potential removal of the Dual Pipelines should take into account short- and long-term effects of the deactivation method options and associated sediment and water quality disturbance on natural resources, particularly fishery resources, in proximity to the Straits. The options include: (a) abandoning in place the entire length of each of the Dual Pipelines; or (b) removing from the Straits the submerged portions of each of the Dual Pipelines that were not fully buried in a ditch and placed under cover near the shoreline of the Straits at the time of initial construction.

I. Line 5 Water Crossings Other Than the Straits: Pursuant to Paragraph I.C. of the First Agreement, Enbridge prepared and submitted to the State the Report entitled *Enhancing Safety and Reducing Potential Impacts at Line 5 Water Crossings* (June 30, 2018) (“Water Crossing Report”). As described in the Water Crossing Report, Enbridge and representatives of the State jointly identified and prioritized a total of 74 Line 5 water crossings in Michigan other than the Straits and organized them into 11 area groupings, detailed in Tables 1 and 2 in Appendix A to the Report. The Water Crossing Report assessed available mitigation measures to: (a) minimize the likelihood of potential releases (leak prevention); and (b) reduce the consequences of potential releases if they were to occur. Based on that assessment, the Report identified a series of specific Action Items to address both of those objectives and proposed time frames for their implementation (Report, pp 18- 24). They include measures related to: (a) Enbridge’s Mainline Integrity program; (b) Enbridge’s Geohazard Management Program; (c) Pipeline Damage Prevention; (d) Emergency Response; and (e) Environmental Management. As reflected in the Water Crossing Report, the Action Items include, among other things, measures that are intended to increase by an order of magnitude Enbridge’s leak prevention safety targets for certain water crossings.

In addition to completing all of the Action Items identified in the Report, the parties have agreed upon two projects at water crossings on which preparatory work shall immediately begin. These specific mitigation measures to be implemented in the near term at certain locations as are specified in Appendix 2 of this Second Agreement.

Enbridge shall implement the Action Items as described in the Report, and as supplemented in this Second Agreement and the Summary contained in Appendix 2 to this Second Agreement, provided that the State and Enbridge may mutually agree in writing to modify Action Items, as well as any tangible follow-up actions, tasks, or mitigation measures associated with the Action Items, as necessary to accommodate site conditions and industry best practices. Any such modifications do not require a written Amendment to this Second Agreement under Section II below. To the extent they differ: (i) the terms of any modification

to the Action Items takes precedence over this Second Agreement; (ii) the terms of this Second Agreement takes precedence over those of Appendix 2; and (iii) those terms of Appendix 2 take precedence over those of the Report.

J. Financial Assurance: The State commissioned the final *Independent Risk Analysis for the Straits Pipelines* (Meadows, et al., September 15, 2018) (hereinafter “Independent Risk Analysis”) to assess a worst-case discharge from the Dual Pipelines, including the cost of responding to that worst-case discharge. Enbridge strongly disagrees with the methods and conclusions of the Independent Risk Analysis report, and nothing in this Second Agreement shall be construed to constitute Enbridge’s acceptance of those methods and conclusions. Enbridge nonetheless agrees that, so long as it continues to operate the Dual Pipelines, the Enbridge entity or entities that own and operate Line 5, or the parent companies of such Enbridge entity(ies), will maintain in force financial assurance mechanisms that meet or exceed the \$1,878,000,000 estimate of Enbridge’s potential total quantifiable response liability for a worst-case discharge from the Dual Pipelines that is identified in the Independent Risk Analysis. To demonstrate compliance with this requirement, on an annual basis Enbridge will file with the State updated financial assurance information in a format similar to that provided in Appendix 3. Enbridge further agrees that, upon the request by the State, it will on an annual basis, make available to the State for inspection and review information regarding the amount, availability, and changes to liability insurance that it maintains. The State agrees that Enbridge’s compliance with the requirements under this Paragraph I.J. satisfies its financial assurance obligations specified under Paragraph J of the Easement.

K. Continuation of Additional Measures to Enhance the Safety of Line 5 in Michigan: Enbridge has in recent years undertaken a variety of additional measures to enhance the safety of Line 5 in Michigan and to improve its emergency preparedness and response capabilities. Such measures, as listed in Appendix 4 to this Agreement, include but are not limited to: (i) the purchase and placement of additional emergency response equipment; (ii) the positioning of permanent personnel in proximity to the Straits; and (iii) improvements to personnel response times to manually close valves in proximity to the Straits. Enbridge agrees that it will continue to implement the measures listed in Appendix 4 so long as it continues to operate the portions of Line 5 to which they apply.

## II. AMENDMENT

The State or Enbridge may propose in writing that this Second Agreement be amended. The State and Enbridge agree to consult in good faith in an effort to reach agreement on any proposed amendment. Except as provided in Paragraph I.G., any amendment agreed to by the State and Enbridge shall be effective on the date that any written amendment is executed by the State and Enbridge.

### **III. DISPUTE RESOLUTION**

The State and Enbridge agree that, should any dispute arise under this Second Agreement, the State and Enbridge shall in good faith attempt to resolve the dispute through informal negotiations. If the parties are unable to informally resolve such a dispute, either party may initiate proceedings in a court of competent jurisdiction to resolve the dispute.

### **IV. TERM AND TERMINATION**

The terms of this Second Agreement shall remain in effect until the commitments in Paragraphs I.B., I.E. - I.I. above are fulfilled, except that the obligations in Paragraphs I.A., I.C., I.D., I.J., and I.K. shall continue, subject to the terms set forth in those Paragraphs, unless and until the Second Agreement terminates automatically. This Second Agreement shall terminate automatically upon the voluntary discontinuation of service by Enbridge of Line 5 through the State of Michigan.

### **V. COMPLIANCE WITH APPLICABLE LAW**

The State and Enbridge acknowledge and agree that Enbridge's operation of Line 5 remains subject to the requirements of all applicable state and federal law, the Easement, the September 3, 2015 Agreement with the State that prohibits Enbridge from transporting heavy crude oil on Line 5 within the State of Michigan, and the terms of any easement granted by the State for Line 5 and agree that nothing in this Second Agreement is intended to relieve Enbridge of its obligation to comply with or waive any rights that Enbridge and the State may have under such laws or to supersede or displace applicable state law, regulation or requirement, or any federal law, regulation, or requirement that is applicable to the operation or maintenance of Line 5, including but not limited to the Pipeline Safety Act (including its preemption provisions); the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (Public Law 114-183); any regulation or order issued by PHMSA or any other federal agency; or the Consent Decree entered into between Enbridge and the United States in *United States v. Enbridge Energy, Limited Partnership, et al.*, No. 1:16-cv-914, ECF No. 14 (E.D. Mich., entered May 23, 2017), which specifies certain investigation, integrity management, leak detection, valve placement, and emergency response measures to prevent discharges of oil or hazardous substances into or upon the waters of the United States or adjoining shorelines.

### **VI. ENTIRE AGREEMENT**

This Second Agreement constitutes the whole of the Agreement between the parties concerning those portions of Enbridge's Line 5 located in the State of Michigan. This Second Agreement supersedes in its entirety the First Agreement.

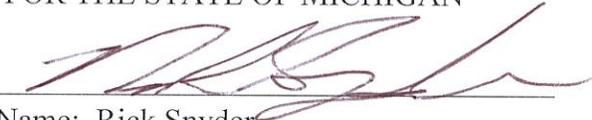
**VII. EXECUTION**

This Second Agreement may be executed in counterparts without the necessity that the Parties execute the same counterpart, each of which will be deemed an original, but which together will constitute one and the same agreement. The exchange of copies of this Second Agreement by electronic or hard-copy means shall constitute effective execution and delivery thereof and may be used in lieu of the original for all purposes.

**VIII. NO THIRD PARTY BENEFICIARIES**

This Second Agreement is intended for the exclusive benefit of the parties hereto and their respective successors. Nothing contained in this Second Agreement shall be construed as creating any rights or benefits in or to any third party. This Second Agreement does not give rise to a private right of action for any person other than the parties to this Second Agreement.

FOR THE STATE OF MICHIGAN



Name: Rick Snyder

Title: Governor

Dated: 10/3/18

\_\_\_\_\_  
Name: Keith Creagh

Title: Director, Michigan Department of  
Natural Resources

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name: Heidi Grether

Title: Director, Michigan Department of  
Environmental Quality

Dated: \_\_\_\_\_

**VII. EXECUTION**

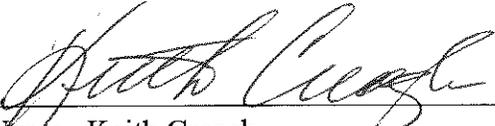
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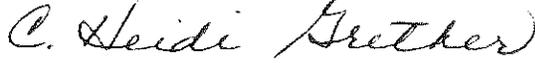
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FOR THE STATE OF MICHIGAN

\_\_\_\_\_  
Name: Rick Snyder  
Title: Governor  
Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Name: Keith Creagh  
Title: Director, Michigan Department of  
Natural Resources  
Dated: 10/3/2018

  
\_\_\_\_\_  
Name: Heidi Grether  
Title: Director, Michigan Department of  
Environmental Quality  
Dated: 10/3/18

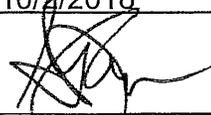
FOR ENBRIDGE ENERGY, LIMITED PARTNERSHIP  
BY: ENBRIDGE PIPELINES (LAKEHEAD) L.L.C. AS GENERAL PARTNER

  
\_\_\_\_\_  
Name: Bradley F. Shamla  
Title: Vice President, U.S. Operations  
Dated: 10/2/2018

  
\_\_\_\_\_  
Name: Al Monaco  
Title: Authorized Signatory for Enbridge Pipelines (Lakehead) L.L.C.  
Dated: 10/2/2018

FOR ENBRIDGE ENERGY COMPANY, INC.

  
\_\_\_\_\_  
Name: Bradley F. Shamla  
Title: Vice President, U.S. Operations  
Dated: 10/2/2018

  
\_\_\_\_\_  
Name: Guy Jarvis  
Title: Executive Vice President – Liquids Pipelines  
Dated: 10/2/2018

FOR ENBRIDGE ENERGY PARTNERS, L.P.  
BY: ENBRIDGE ENERGY MANAGEMENT, L.L.C. AS DELEGATE OF ITS GENERAL  
PARTNER

  
\_\_\_\_\_  
Name: Bradley F. Shamla  
Title: Vice President, U.S. Operations  
Dated: 10/2/2018

## Appendix 1

### Enbridge Line 5 – Sustained Adverse Weather Conditions Procedure

This Appendix is designed to facilitate an effective emergency response to a potential release incident by specifying procedures for a systematic approach by Enbridge to temporarily shut down Line 5 in the Straits of Mackinac during Sustained Adverse Weather Conditions. Enbridge shall maintain a record of its use of the procedure and make it available to the State. If an alternate source of near-real time wave height data such as the radar system planned by the State becomes available following the execution of this agreement, Enbridge and the State will work cooperatively to revise this Appendix to account for the alternative data source.

**Definitions:**

Sustained Adverse Weather Conditions: Conditions in which median wave heights in the Straits of Mackinac over a continuous 60-minute period are greater than 8 feet based on “Near-real Time Data,” or in its absence “Modeled Data.”

Near-real Time Data: The wave height data derived from Buoy 45175 (Mackinac Straits West) of the Great Lakes Research Center of Michigan Technological University’s Upper-Great Lakes Observing System (UGLOS) and/or alternate data sources such as radar data, as mutually agreed by the State and Enbridge through a modification of this Appendix.

Modeled Data: Modeled wave height data based on real-time data inputs that is available on the NOAA Great Lakes Coastal Forecasting System (GLCFS) Nowcast model at a representative point in the Straits.

Forecasted Data: Data available on the NOAA Great Lakes Coastal Forecasting System Forecast model at a representative point in the Straits.

### Enbridge Line 5 Procedures – Sustained Adverse Weather Conditions

Step #	Action
1	Enbridge or Enbridge Consultant (collectively “Enbridge Monitor”) will continuously monitor Near-real Time Data, or in its absence Modeled Data, to identify Sustained Adverse Weather Conditions at the Straits.
2	When Sustained Adverse Weather Conditions are forecasted based on Forecasted Data, the Enbridge Monitor will inform the Control Center Operations Shift Supervisor, at which point the Control Center Operations will prepare for the potential that an unplanned shut down of Line 5 at the Straits may be required.
3	When Near-real Time Data, or in its absence Modeled Data, indicate that Sustained Adverse Weather Conditions are occurring at the Straits, the Enbridge Monitor will immediately contact the Control Center Operations Shift Supervisor.

Step #	Action
4	The Control Center Operations Shift Supervisor will promptly call the Enbridge Great Lakes On-Call Manager to advise them that Sustained Adverse Weather Conditions exist at the Straits.
5	The Enbridge Great Lakes On-Call Manager will request, no later than 15 minutes after being notified in Step 4 above, that the Control Center Operations shutdown Line 5. If real time conditions in the Straits determined by the Enbridge Great Lakes On-Call Manager indicate Sustained Adverse Weather Conditions do not exist, the Great Lakes On-Call Manager will advise the Control Center Operations Shift Supervisor that Line 5 should not be shutdown. In that event, the Enbridge Monitor will continue to monitor conditions as per Step 1 for changes that indicate that Sustained Adverse Weather conditions may be present and the other Steps in this Appendix shall be followed should the Enbridge Monitor determine that such conditions are present.
6	Unless advised otherwise by the Enbridge Great Lakes On-Call Manager as per Step 5 above, Control Center Operations will perform a controlled emergency shut down of Line 5 and isolate the segment across the Straits.
7	While shut down, the Enbridge Monitor will continuously monitor Near-real Time Data, or in its absence Modeled Data, to identify the continuance of Sustained Adverse Weather Conditions at the Straits.
8	When Near-real Time Data, or in its absence Modeled Data, indicates the Sustained Adverse Weather Conditions no longer exist at the Straits, the Enbridge Great Lakes On Call Manager and Control Center Operations Admin On Call will authorize the restart of Line 5.
9	Control Center Operations will safely restart Line 5.

**Communications Protocol:**

Enbridge shall immediately notify the State of Michigan as follows: (i) when median wave heights in the Straits over a continuous 60-minute period exceed 6.5 feet in height based upon “Near-real time Data” or in its absence, “Modeled Data,” as those terms are defined in Appendix 1, and Enbridge has acted to ensure that at least one Enbridge employee is available and capable of traveling to the Line 5 North Straits valve station in less than 15 minutes; (ii) when Line 5 has been temporarily shut down in the Straits of Mackinac due to Sustained Adverse Weather Conditions, as per Step 6 above; and (iii) when Line 5 has been safely restarted in the Straits of Mackinac, as per Step 9 above. Any notification required under this provision shall be made by email to a specified email address provided to Enbridge by the State of Michigan.

## Appendix 2

### Action Items for Water Crossings Other than the Straits

#### A. Additional Near-Term Items

1. Mitigate potential geohazard at the following water crossings:
  - a. Point Aux Chenes (3)-restore depth of cover and stabilize bank to prevent further erosion:
    - i. Work with State Technical Team to select method, design and schedule within 3 months from the effective date of this Agreement.
    - ii. Apply for all necessary permits within 6 months from the effective date of this Agreement.
    - iii. Complete construction of mitigation measures within 12 months after receipt of permits.
  - b. Tributary to Paint River – Address exposed section of pipeline:
    - i. Work with State Technical Team to select method, design and schedule within 3 months of the effective date of this Agreement.
    - ii. Apply for all necessary permits within 6 months from the effective date of this Agreement.
    - iii. Complete construction of mitigation measures within 12 months after receipt of permits.
2. Accelerated field work to evaluate crossings with potential need for geohazard remediation. Additional information to be gathered for the following crossings within 6 months from the effective date of this Agreement:
  - a. Whitefish River - MP 1358
  - b. Rapid River – MP 1356
  - c. Tributary to Southwest Branch Fishdam River – MP 1373
  - d. Elm Creek – MP 1691
  - e. East Branch Black River – MP 1442
  - f. East Mile Creek – MP 1436
  - g. Paquin Creek – MP 1448
  - h. Pointe Aux Chenes River (1) – MP 1466
  - i. West Branch Paquin Creek – MP 1447
  - j. West Mile Creek – MP 1436
  - k. Red Creek – MP 1563

Based on evaluations, remedial measures, if needed, may include: depth of cover restoration; bank and bed armoring; or pipeline lowering or replacement. These remedial measures will be implemented as follows:

- i. Work with State Technical Team for method selection, design and schedule within 6 months from the effective date of this Agreement.
- ii. Apply for all necessary permits within 12 months from the effective date of this Agreement.
- iii. Complete construction of remedial measures within 12 months after receipt of permits.

**B. Action Items in Report**

<b>Preventive and Mitigative Measures</b>	<b>Time to Complete (months)</b>	<b>Number of locations</b>
---	----------------------------------	----------------------------

**Leak Prevention Measures**

1. Increase Safety Targets Within Grouping Areas	6	All
2. Engineering Assessment	12	4
3. Baseline Geohazard Assessment	18	17
4. Depth of Cover/Bathymetric Survey	18	31
5. Perform Detailed Scour Study	18	7
6. Replacement/Lowering	TBD	TBD
7. Outreach to local government officials involved in construction activities near waterbodies	6	All

**Consequence Mitigation Measures**

8.	Review Emergency Response Training and Exercise Communication Plan	6	All
9.	Establish Additional Emergency Response Tactical Control Points	12	10
10.	Collaborative Review of Emergency Response Tactical Control Points	9	All
11.	Update Environmental Sensitivity Maps with State Sensitivity Data	12	All
12.	Review Emergency Response Aquatic Invasive Species Inspection Procedure	12	All
13.	Conduct Baseline Environmental Studies - Rare Wetland Communities	18	20

**Biology Mitigation Studies**

14.	Fisheries	18	12
15.	Freshwater Mussels	18	31
16.	Biological Integrity	18	11

**Appendix 3**  
**Enbridge Financial Assurance Verification Form for Calendar Year [Insert]**

	<b>Enbridge Inc. (EI)</b>	<b>Enbridge Energy Partners, L.P. (EEP)</b>	<b>Total</b>	<b>Timing of Access (business days - estimate)</b>
Cash	\$ (as per EI's consolidated Q_ 20__ balance sheet– cash & cash equivalents		\$	1 day
Credit Facility (available liquidity as at [date]) Note 1	\$	\$	\$	1-3 days
Other Resources Available in 30-60 Days (explain)	\$ (as per EI's consolidated Q_ 20__ balance sheet – accounts receivable and other)		\$	30-60 days
<b>Total Short-Term</b>	\$	\$	\$	
Insurance	General Liability Insurance, includes Time Element Reporting Pollution (sudden and accidental) coverage currently US\$[Insert] Note 2			Note 3
Surety Bonds				
Parent/Affiliate Guarantees (from Parent Co. to Authorization Holder)				
Other Financial Resources (explain)				
<b>Total Other</b>				

Notes:

1. Enbridge utilizes the commercial paper markets in both Canada and the US as a cost effective source of short term liquidity. The commercial paper programs are fully backstopped by the Credit Facilities and the availability of such is reflected net of any commercial paper outstanding.
2. The reflected insurance amount represents the limit for coverage that is maintained by EI for the specified calendar year, and for which EEP is named as an insured under that policy, thereby enabling EEP to obtain insurance recoveries for events covered under the policy. The insurance amount is reviewed and renewed on an annual basis and is subject to insurance market conditions and experience that may impact the breadth and limit of coverage available.
3. The insurance coverage maintained by EI provides any Enbridge entity covered under that policy, such as EEP, with eventual recovery of monies which that Enbridge entity has paid because of its legal liability for direct third- party bodily injury and property damage caused by the release and that financial recovery can extend over a period of months and years.

## Appendix 4

### Enhanced Safety and Emergency Response Capabilities

Enbridge has, in recent years, undertaken a variety of additional measures to enhance the safety of Line 5 and to improve its emergency preparedness and response capability at the Straits of Mackinac, in the Great Lakes, and throughout Michigan. Enbridge agrees that it will continue these measures so long as it continues to operate the portions of Line 5 to which they apply. These measures include, but are not limited to:

#### Equipment:

- a. Enbridge recently strengthened its already robust emergency response capabilities for the Great Lakes by adding more than \$7 million of emergency response equipment to be staged at the Straits of Mackinac. This equipment can be deployed in the Straits and throughout the Great Lakes as necessary. The new equipment includes, but is not limited to:
  - 10,000 feet of Sea Sentry Boom - heavy duty open water containment boom which is fit for service in the presence of ice and rough waters. This boom can withstand wave action to eight feet.
  - 1,000 feet of Fire Boom, necessary for an in situ burning response.
  - Lamor Ice Skimmers (the first deployment in North America)
  - Nofi Current Busters
- b. The company holds annual boom deployment exercises in the Great Lakes.
- c. Valve Closure Gang boxes, which includes the necessary equipment to execute a manual valve closure, have been located at North Straits valve site and pre-located at each pump station along Line 5.

#### Personnel:

- d. Enbridge established a Pipeline Maintenance (PLM) Crew at St. Ignace adding five employees in addition to the Enbridge employee permanently based in the Straits of Mackinac area. This crew augments crews already stationed along Line 5 in Ironwood, Escanaba, Indian River, and Bay City.
- e. Enbridge recently agreed to purchase a building in St. Ignace that will house its local operations employees. The new facility is less than 10 minutes from the North Straits valve site.
- f. Enbridge has implemented Incident Command System (ICS) role specific training for its Regional team and Operations Leadership individuals.

#### Response time:

- g. The company improved personnel response time for manual closing of valves at the North Straits valve site to under an hour, and with a target time of no more than 45 minutes – no matter what time of day or weather condition. Manual closing of the valves would be necessary only if all other redundant systems on Line 5 at the Straits would fail. The redundant systems include:
  - 1) Dedicated 24/7 remote operational control of the pipelines from the Enbridge Control Center. All valves can be remotely opened and closed by the Control Center.

- If there is a power failure at the North Straits site resulting in communications loss with the Control Center, an automatic back-up generator on-site will restore power and allow communications with the Control Center.
- 2) The pipelines at the Straits are equipped with automatic shut-off valves which will close within three minutes should a threshold pressure loss occur in the pipelines. These closures would be independent of and could not be overridden by any Control Center action. In the unlikely event that communications with the Control Center is lost due to a power outage and the backup generator fails, and the automatic valves fail to operate properly, valves can be closed manually.

# EXHIBIT F

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STRAITS OF MACKINAC PIPE LINE EASEMENT  
CONSERVATION COMMISSION OF THE STATE OF MICHIGAN  
TO  
LAKEHEAD PIPE LINE COMPANY, INC.

THIS EASEMENT, executed this twenty-third day of April, A. D. 1953, by the State of Michigan by the Conservation Commission, by Wayland Osgood, Deputy Director, acting under and pursuant to a resolution adopted by the Conservation Commission at its meeting held on February 13, 1953, and by virtue of the authority conferred by Act No. 10, P. A. 1953, hereinafter referred to as Grantor, to Lakehead Pipe Line Company, Inc., a Delaware corporation, of 510 22nd Avenue East, Superior, Wisconsin, hereinafter referred to as Grantee,

W I T N E S S E T H:

WHEREAS, application has been made by Grantee for an easement authorizing it to construct, lay and maintain pipe lines over, through, under and upon certain lake bottom lands belonging to the State of Michigan, and under the jurisdiction of the Department of Conservation, located in the Straits of Mackinac, Michigan, for the purpose of transporting petroleum and other products; and

WHEREAS, the Conservation Commission is of the opinion that the proposed pipe line system will be of benefit to all of the people of the State of Michigan and in furtherance of the public welfare; and

WHEREAS, the Conservation Commission duly considered the application of Grantee and at its meeting held on the 13th day of February, A. D. 1953, approved the conveyance of an easement.

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NOW, THEREFORE, for and in consideration of the sum of Two Thousand Four Hundred Fifty Dollars (\$2,450.00), the receipt of which is hereby acknowledged, and for and in consideration of the undertakings of Grantee and subject to the terms and conditions set forth herein, Grantor hereby conveys and quit claims, without warranty express or implied, to Grantee an easement to construct, lay, maintain, use and operate two (2) pipe lines, one to be located within each of the two parcels of bottom lands hereinafter described, and each to consist of twenty inch (20") O D pipe, together with anchors and other necessary appurtenances and fixtures, for the purpose of transporting any material or substance which can be conveyed through a pipe line, over, through, under and upon the portion of the bottom lands of the Straits of Mackinac in the State of Michigan, together with the right to enter upon said bottom lands, described as follows:

All bottom lands of the Straits of Mackinac, in the State of Michigan, lying within an area of fifty (50) feet on each side of the following two center lines:

(1) Easterly Center Line: Beginning at a point on the northerly shore line of the Straits of Mackinac on a bearing of South twenty-four degrees, no minutes and thirty-six seconds East (S 24° 00' 36" E) and distant one thousand seven hundred and twelve and eight-tenths feet (1,712.8') from United States Lake Survey Triangulation Station "Green" (United States Lake Survey, Latitude 45° 50' 00", Longitude 84° 44' 58"), said point of beginning being the intersection of the center line of a twenty inch (20") pipe line and the said northerly shore line; thence, on a bearing of South fourteen degrees thirty-seven minutes and fourteen seconds West (S 14° 37' 14" W) a distance of nineteen thousand one hundred and forty-six and no tenths feet (19,146.0') to a point on the southerly shore line of the Straits of Mackinac which point is the intersection of the said center line of the twenty inch (20") pipe line and the said southerly shore line; and is distant seven hundred and seventy-four and seven tenths feet (774.7') and on a bearing of South thirty-six degrees, eighteen minutes and forty-five seconds West (S 36° 18' 45" W) from United States Lake Survey Triangulation Station "A. Mackinac West Base" (United States

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Lake Survey, Latitude  $45^{\circ} 47' 14''$ , Longitude  $84^{\circ} 46' 22''$ ).

(2) Westerly Center Line: Beginning at a point on the northerly shore line of the Straits of Mackinac on a bearing of South forty-nine degrees, twenty-five minutes and forty-seven seconds East ( $S 49^{\circ} 25' 47'' E$ ) and distant two thousand six hundred and thirty-four and nine tenths feet ( $2,634.9'$ ) from United States Triangulation Station "Green" (United States Lake Survey, Latitude  $45^{\circ} 50' 00''$ , Longitude  $84^{\circ} 44' 58''$ ) said point of beginning being the intersection of the center line of a twenty inch (20") pipe line and the said northerly shore line; thence on a bearing of South fourteen degrees, thirty-seven minutes and fourteen seconds West ( $S 14^{\circ} 37' 14'' W$ ), a distance of nineteen thousand four hundred and sixty-five and no tenths feet ( $19,465.0'$ ) to a point on the southerly shore line of the Straits of Mackinac which point is the intersection of the said center line of the twenty inch (20") pipe line and the said southerly shore line and is distant one thousand no hundred and thirty-six and four tenths feet ( $1,036.4'$ ) on a bearing of South sixty-three degrees, twenty minutes and fifty-four seconds East ( $S 63^{\circ} 20' 54'' E$ ) from United States Lake Survey Triangulation Station "A. Mackinac West Base" (United States Lake Survey, Latitude  $45^{\circ} 47' 14''$ , Longitude  $84^{\circ} 46' 22''$ ).

TO HAVE AND TO HOLD the said easement unto said Grantee, its successors and assigns, subject to the terms and conditions herein set forth, until terminated as hereinafter provided.

This easement is granted subject to the following terms and conditions:

A. Grantee in its exercise of rights under this easement, including its designing, constructing, testing, operating, maintaining, and, in the event of the termination of this easement, its abandoning of said pipe lines, shall follow the usual, necessary and proper procedures for the type of operation involved, and at all times shall exercise the due care of a reasonably prudent person for the safety and welfare

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of all persons and of all public and private property, shall comply with all laws of the State of Michigan and of the Federal Government, unless Grantee shall be contesting the same in good faith by appropriate proceedings, and, in addition, Grantee shall comply with the following minimum specifications, conditions and requirements, unless compliance therewith is waived or the specifications or conditions modified in writing by Grantor:

(1) All pipe line laid in water up to fifty (50) feet in depth shall be laid in a ditch with not less than fifteen (15) feet of cover. The cover shall taper off to zero (0) feet at an approximate depth of sixty-five (65) feet. Should it be discovered that the bottom material is hard rock, the ditch may be of lesser depth, but still deep enough to protect the pipe lines against ice and anchor damage.

(2) Minimum testing specifications of the twenty inch (20") OD pipe lines shall be not less than the following:

Shop Test-----1,700 pounds per square inch gauge  
Assembly Test-----1,500 pounds per square inch gauge  
Installation Test--1,200 pounds per square inch gauge  
Operating Pressure- 600 pounds per square inch gauge

(3) All welded joints shall be tested by X-Ray.

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- (4) The minimum curvature of any section of pipe shall be no less than two thousand and fifty (2,050) feet radius.
- (5) Automatic gas-operated shut-off valves shall be installed and maintained on the north end of each line.
- (6) Automatic check valves shall be installed and maintained on the south end of each line.
- (7) The empty pipe shall have a negative buoyancy of thirty (30) or more pounds per linear foot.
- (8) Cathodic protection shall be installed to prevent deterioration of pipe.
- (9) All pipe shall be protected by asphalt primer coat, by inner wrap and outer wrap composed of glass fiber fabric material and one inch by four inch (1" x 4") slats, prior to installation.
- (10) The maximum span or length of pipe unsupported shall not exceed seventy-five (75) feet.
- (11) The pipe weight shall not be less than one hundred sixty (160) pounds per linear foot.
- (12) The maximum carbon content of the steel, from which the pipe is manufactured, shall not be in excess of .247 per cent.

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(13) In locations where fill is used, the top of the fill shall be no less than fifty (50) feet wide.

(14) In respect to other specifications, the line shall be constructed in conformance with the detailed plans and specifications heretofore filed by Grantee with Lands Division, Department of Conservation of the State of Michigan.

B. Grantee shall give timely notice to the Grantor in writing:

(1) Of the time and place for the commencement of construction over, through, under or upon the bottom lands covered by this easement, said notice to be given at least five (5) days in advance thereof:

(2) Of compliance with any and all requirements of the United States Coast Guard for marking the location of said pipe lines;

(3) Of the filling of said pipe lines with oil or any other substance being transported commercially;

(4) Of any breaks or leaks discovered by Grantee in said pipe lines, said notice to be given by telephone promptly upon discovery and thereafter confirmed by registered mail;

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(5) Of the completion of any repairs of said pipe lines, and time of testing thereof, said notice to be given in sufficient time to permit Grantor's authorized representatives to be present at the inspection and testing of the pipe lines after said repairs; and

(6) Of any plan or intention of Grantee to abandon said pipe lines, said notice to be given at least sixty (60) days prior to commencement of abandonment operations.

C. The easement herein conveyed may be terminated by Grantor:

(1) If, after being notified in writing by Grantor of any specified breach of the terms and conditions of this easement, Grantee shall fail to correct said breach within ninety (90) days, or, having commenced remedial action within such ninety (90) day period, such later time as it is reasonably possible for the Grantee to correct said breach by appropriate action and the exercise of due diligence in the correction thereof;  
or

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(2) If Grantee fails to start construction of the pipe lines authorized herein within two years from date of execution of this instrument; or

(3) If Grantee fails for any consecutive three-year period to make substantial use of said pipe lines commercially and also fails to maintain said pipe lines during said period in such condition as to be available to commercial use within thirty (30) days.

D. Construction of the pipe lines contemplated by this instrument shall not be commenced until all necessary authorization and assent of the Corps of Engineers, United States Army, so far as concerns the public rights of navigation, shall have been obtained.

E. In the event of any relocation, replacement, major repair, or abandonment of either of the pipe lines authorized by this easement, Grantee shall obtain Grantor's written approval of procedures, methods and materials to be followed or used prior to commencement thereof.

F. The maximum operating pressure of either of said pipe lines shall not exceed six hundred (600) pounds per square inch gauge.

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If there is a break or leak or an apparent break or leak in either of said pipe lines, or if Grantor notifies Grantee that it has good and sufficient evidence that there is or may be a break or leak therein, Grantee shall immediately and completely shut down the pipe line involved and said pipe line shall not be placed in operation until Grantee has conducted a shut-in two (2) hour pressure test of six hundred (600) pounds per square inch gauge showing that no substance is escaping from a break or leak in said pipe line.

G. If oil or other substance escapes from a break or leak in the said pipe lines, Grantee shall immediately take all usual, necessary and proper measures to eliminate any oil or other substance which may escape.

H. In the event the easement herein conveyed is terminated with respect to either or both of said pipe lines, or if any part or portion of a pipe line is abandoned, Grantee shall take all of the usual, necessary and proper abandonment procedures as required and approved by Grantor. Said abandonment operations shall be completed to the satisfaction of Grantor within one year after any abandonment of any part or portion of a pipe line; or in event of termination of this easement, within one year thereafter. After the expiration of one year following the termination of this easement, Grantee

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shall at the option of Grantor quit claim to the State of Michigan all of its right, title and interest in or to any pipe line, appurtenances or fixtures remaining over, through, under or upon the bottom lands covered by this easement. Abandonment procedures as used herein include all operations that may be reasonably necessary to protect life and property from subsequent injury.

I. Grantee shall permit Grantor to inspect at reasonable times and places its records of oil or any other substance being transported in said pipe lines and shall, on request, submit to Grantor inspection reports covering the automatic shut-off and check valves and metering stations used in connection with the Straits of Mackinac crossing.

J. (1) Grantee shall indemnify and hold harmless the State of Michigan from all damage or losses caused to property (including property belonging to or held in trust by the State of Michigan), or persons due to or arising out of the operations or actions of Grantee, its employees, servants and agents hereunder. Grantee shall place in effect prior to the construction of the pipe lines authorized by this easement and shall maintain in full force and effect during the life of this easement, and until Grantor has approved completion of abandonment operations, a Comprehensive Bodily Injury and Property Damage Liability policy, bond or surety, in form and substance acceptable to Grantor in the sum of at least One Million Dollars (\$1,000,000.00), covering the liability herein imposed upon Grantee.

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(2) Grantee, prior to commencing construction of the pipe lines authorized by this easement, shall provide the State of Michigan with a surety bond in the penal sum of One Hundred Thousand Dollars (\$100,000.00) in form and substance acceptable to Grantor, and surety or sureties approved by Grantor, to well, truly and faithfully perform the terms, conditions and requirements of this easement. Said bond shall be maintained in full force and effect during the life of this easement and until Grantor has approved completion of Grantee's abandonment operations. Said bond shall not be reduced in amount except with the written consent of Grantor.

K. Grantee shall within sixty (60) days thereafter notify Grantor in writing of any assignment of this easement.

L. The terms and conditions of this easement shall be binding upon and inure to the benefit of the respective successors and assigns of Grantor and Grantee.

M. All rights not specifically conveyed herein are reserved to the State of Michigan.

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N. Grantee shall not improvise, construct or maintain ship-to-shore or ship-to-pipe line loading or unloading facilities over, through, under or upon any of the bottom lands herein described for the purpose of removing material from or injecting material into said pipe lines.

O. Grantor shall have the right at all reasonable times and places to inspect the pipe lines, appurtenances and fixtures authorized by this easement.

P. It shall not be a breach of the terms and conditions of this easement if for operating or maintenance reasons Grantee shall make use of only one of said pipe lines at a time.

Q. Where provision is made herein that Grantee shall obtain the authorization, approval or consent of Grantor, Grantor agrees that it will not unreasonably withhold the same.

IN WITNESS WHEREOF, the State of Michigan by the Conservation Commission, by Wayland Osgood, Deputy Director, acting pursuant to authority specifically conferred upon him, has caused this instrument to be executed this twenty-third day of April, A.D. 1953.

Signed, Sealed and Delivered  
in the Presence of:

/s/ Jane Bower  
Jane Bower

/s/ Elizabeth Soule  
Elizabeth Soule

STATE OF MICHIGAN  
BY THE CONSERVATION COMMISSION

By /s/ Wayland Osgood  
Wayland Osgood, Deputy Director,  
pursuant to resolutions of the  
Conservation Commission dated  
February 13, 1953 and July 10,  
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STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application for the Authority to Replace and Relocate the Segment of Line 5 Crossing the Straits of Mackinac into a Tunnel Beneath the Straits of Mackinac, if Approval is Required Pursuant to 1929 PA 16; MCL 483.1 et seq. and Rule 447 of the Michigan Public Service Commission's Rules of Practice and Procedure, R 792.10447, or the Grant of other Appropriate Relief

U-20763

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**PROOF OF SERVICE**

On the date below, an electronic copy of **Supplemental Authority Submitted by Bay Mills Indian Community Regarding Enbridge Energy, Limited Partnership's Request for Declaratory Relief** was served on the following:

Name/Party	E-mail Address
<b>Counsel for Enbridge Energy, Limited Partnership.</b> Michael S. Ashton Shaina Reed	<a href="mailto:mashton@fraserlawfirm.com">mashton@fraserlawfirm.com</a> <a href="mailto:sreed@fraserlawfirm.com">sreed@fraserlawfirm.com</a>
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<b>Counsel for Tip of the Mitt Watershed Council</b> Christopher M. Bzdok Lydia Barbash-Riley Abigail Hawley	<a href="mailto:chris@envlaw.com">chris@envlaw.com</a> <a href="mailto:lydia@envlaw.com">lydia@envlaw.com</a> <a href="mailto:abbie@envlaw.com">abbie@envlaw.com</a>

The statements above are true to the best of my knowledge, information and belief.

OLSON, BZDOK & HOWARD, P.C.  
Counsel for BMIC

Date: June 25, 2020

By: \_\_\_\_\_  
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