

STATE OF MICHIGAN	RECEIVED SUMMONS	CASE NO.
IN THE COURT OF CLAIMS		19-000090-MZ Judge Kelly

Court address
925 W. Ottawa Street, Hall of Justice, Lansing, MI 48909

Court telephone no.
(517) 373-2252

Plaintiff's name(s), address(es), and telephone no(s).
ENBRIDGE ENERGY, LIMITED PARTNERSHIP;
ENBRIDGE ENERGY COMPANY, INC.; and ENBRIDGE
ENERGY PARTNERS, L.P.

Plaintiff's attorney, bar no., address, and telephone no.
DICKINSON WRIGHT PLLC
Peter H. Ellsworth (P23657) Jeffery V. Stuckey (P34648)
215 S. Washington Sq., Ste. 200, Lansing, MI 48933
Phillip J. DeRosier (P55595)
500 Woodward Ave., Ste. 4000, Detroit, MI 48226

v

Defendant's name(s), address(es), and telephone no(s).
GRETCHEN WHITMER, in her official capacity as
Governor of Michigan
P.O. Box 30013
Lansing, MI 48909

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. Attached is a completed case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☒ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☒ this court, ☐ _____ Court, where

it was given case number 18-000269-MM and assigned to Judge Stephen Borrello

The action ☐ remains ☒ is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party or **take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date 6/6/19	Expiration date* 9/5/19	Court clerk Jerome W. Zimmer Jr.
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

PROOF OF SERVICE**SUMMONS**

Case No. 19-

-MZ

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint.
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with _____

List all documents served with the summons and complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____
Attachments

_____ on _____
Day, date, time

Signature _____ on behalf of _____

RECEIVED

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

2019 MAY -6 P 5:03
OFFICE OF LEGAL COUNSEL
ENBRIDGE ENERGY, LIMITED PARTNERSHIP,
ENBRIDGE ENERGY COMPANY, INC., and
ENBRIDGE ENERGY PARTNERS, L.P.,

Plaintiffs,

Case No.

-MZ

v.

Hon.

STATE OF MICHIGAN,
GOVERNOR OF MICHIGAN,
MACKINAC STRAITS CORRIDOR AUTHORITY,
MICHIGAN DEPARTMENT OF NATURAL RESOURCES, and
MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY,

Defendants.

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*Attorneys for Enbridge Energy, Limited
Partnership, Enbridge Energy Company,
Inc., and Enbridge Energy Partners, L.P.*

A civil action between these parties or other parties arising out of the same transaction or occurrence alleged in the complaint has been previously filed in this court, where it was given docket number 18-000269-MM and was assigned to Judge Stephen Borrello.

The action is no longer pending.

VERIFIED COMPLAINT

Plaintiffs Enbridge Energy, Limited Partnership, Enbridge Energy Company, Inc., and Enbridge Energy Partners, L.P. (collectively “Enbridge”), through their attorneys, Steptoe & Johnson LLP and Dickinson Wright PLLC, allege as follows:

I. INTRODUCTION

1. Enbridge owns and operates a 645 mile long interstate pipeline known as Line 5 that transports petroleum products that originate in Canada and the United States, including Michigan. Line 5 serves customers in Michigan, other states, and Canada. The approximately 4-mile segment of Line 5 that traverses the Straits of Mackinac is divided into two pipelines known as the Line 5 Dual Pipelines (referred to herein as the “Line 5 Dual Pipelines”).

2. In 2017 and 2018, Enbridge and the state entity defendants entered into a series of agreements. Those agreements provided for the replacement of the Line 5 Dual Pipelines with a new line to be located inside of a tunnel (“Straits Tunnel”). In the December 2018 agreements, Enbridge agreed to construct the Straits Tunnel at its own expense, using an easement issued under the December 2018 agreements by the Michigan Department of Natural Resources to the Mackinac Straits Corridor Authority, which in turn assigned rights under the easement to Enbridge. In the December 2018 agreements, the State affirmed Enbridge’s right to continue operating the Line 5 Dual Pipelines until the replacement line is completed.

3. Following elections, the State reversed course. The State now refuses to honor the promises made in the December 2018 agreements.

4. The State’s reversal is based on a March 28, 2019, opinion of the Attorney General, issued in response to a January 1, 2019 letter from the Governor raising questions about Act 359 on her first day in office. In this opinion, the Attorney General declared unconstitutional the statute enacted on December 12, 2018, Public Act 359 (“Act 359”), that provided the basis for the State’s

authority to enter into the December 2018 agreement with Enbridge providing for the construction of the Straits Tunnel and creating the Mackinac Straits Corridor Authority. The Attorney General opined that the statute violated the Title-Object Clause of Michigan's Constitution.

5. The Attorney General's Opinion was followed immediately by the issuance of Executive Directive 2019-13. There, the Governor directed state agencies not to take any steps to implement the December 2018 agreements.

6. Enbridge brings this action seeking a declaration that Act 359 complies with the Michigan Constitution, that the Mackinac Straits Corridor Authority was lawfully established and that the December 2018 agreements are in effect and enforceable.

II. PARTIES, JURISDICTION, AND VENUE

7. Enbridge brings this action against the State of Michigan ("State"), the Governor of Michigan ("Governor"), the Mackinac Straits Corridor Authority ("MSCA" or "Corridor Authority"), the Michigan Department of Natural Resources ("MDNR"), and the Michigan Environment, Great Lakes and Energy Department ("MEGLE"), formerly known as the Michigan Department of Environmental Quality ("MDEQ") (collectively "Defendants").

8. Enbridge, as a party to the agreements that are the subject of this action, has standing to bring the claims asserted below.

9. Enbridge Energy, Limited Partnership is a Delaware limited partnership conducting business in Michigan, with its principal place of business located at 5400 Westheimer Court, Houston, Texas 77056.

10. Enbridge Energy Company, Inc., is a Delaware corporation conducting business in Michigan, with its principal place of business located at 5400 Westheimer Court, Houston, Texas 77056.

11. Enbridge Energy Partners, L.P., is a Delaware limited partnership conducting business in Michigan, with its principal place of business located at 5400 Westheimer Court, Houston, Texas 77056.

12. Gretchen Whitmer took office on January 1, 2019 as the Governor of Michigan and is vested with the executive power of the State of Michigan pursuant to Const. 1963, art 5, § 1.

13. The Mackinac Straits Corridor Authority is a state institution created by Act 359 to reside within the Michigan Department of Transportation.

14. The Michigan Department of Environment, Great Lakes, and Energy (formerly the Michigan Department of Environmental Quality) is a principal department of the executive branch, as defined by Const. 1963, art 5, §2.

15. The Michigan Department of Natural Resources is a principal department of the executive branch, as defined by Const. 1963, art 5, §2.

16. Pursuant to MCL 600.6419(1), this Court has exclusive jurisdiction over this matter.

17. The conduct giving rise to this action occurred in Lansing, Michigan, which is also the principal location of the governmental units involved.

III. RELEVANT FACTS

A. Enbridge's Line 5 Pipeline

18. Enbridge is part of the Enbridge family of companies that are primarily located in the United States and Canada and that together make Enbridge one of the industry leaders in the transportation and distribution of energy in North America. Collectively, they own and operate liquids and natural gas pipelines, wind farms, solar plants and a local natural gas distribution

company. In particular, the Enbridge companies own and operate a system of liquids pipelines collectively referred to as the Enbridge Mainline System.

19. The Enbridge Mainline System transports petroleum products from the Western Canadian Sedimentary Basin ("WCSB") and extraction points in the U.S. to markets in the U.S. and Eastern Canada. The Enbridge Mainline System is made up of the Canadian mainline system, which transports petroleum products from the WCSB to the international border near Neche, North Dakota, and the Lakehead System. The Lakehead System is the U.S. portion of the Enbridge Mainline System and consists of pipelines in North Dakota, Minnesota, Wisconsin, Illinois, Indiana, Michigan, and New York.

20. Together, the Enbridge Mainline System and Enbridge's market extension pipelines comprise approximately 15,795 miles of liquid petroleum pipelines and constitute the world's longest crude petroleum and petroleum liquids pipeline network.

21. Enbridge's Line 5 is an integral part of the Lakehead System. Line 5 was placed into service in 1954 and transports light crude oil, light synthetic crude oil, and natural gas liquids, including propane (collectively "petroleum products"). Line 5 extends from Superior, Wisconsin, through the Upper Peninsula of Michigan to the City of Marysville in the Lower Peninsula of Michigan and then across the U.S.-Canada international boundary to Sarnia, Ontario, Canada. A map of the Line appears below.



22. In Michigan, Line 5 crosses the Straits of Mackinac, an approximately 4-mile long span of water that connects Lake Michigan and Lake Huron. At the point of and for the duration of that crossing, Line 5 consists of two 20-inch diameter seamless pipes that rest on or are anchored to the submerged lands located below the Straits. At points in Michigan, Line 5 also crosses underneath the Saginaw River and the St. Clair River, among numerous water and wetland crossings.

23. For over sixty years, Line 5 has transported petroleum products from its origination point in Superior, Wisconsin to Sarnia, Ontario with several on-loading and off-loading delivery points in Michigan to meet energy production and consumption demands in the State.

24. Currently, Line 5 transports approximately 540,000 barrels per day of petroleum products to, from, and through the state of the Michigan. These products heat homes and businesses, provide feedstock for refining into vehicle and aviation fuels, and are used to produce a myriad of consumer goods, from computers to clothing to cellphones.

B. 1953 Easement Authorizing the Line 5 Dual Pipelines' Crossing of the Straits

25. On April 23, 1953, the Michigan Conservation Commission executed the Straits of Mackinac Pipeline Easement (the "Easement" or "1953 Easement"). The 1953 Easement authorized construction and operation of the Line 5 Dual Pipelines on the bottom lands of the Straits. In granting the Easement, the Conservation Commission acted by virtue of authority conferred by the legislature in 1953 PA 10 ("1953 Act").

26. The 1953 Act conferred on the Conservation Commission authority to issue an easement "for the purpose of erecting, laying, maintaining and operating pipe lines ... over, through, under and upon any ... lake bottom lands belonging to or held in trust by the state of Michigan." MCL 324.2129 (as codified and amended). Pursuant to this authority, the Conservation Commission in fact granted the 1953 Easement to Lakehead Pipe Line Company, Inc., an entity later renamed as Enbridge Energy Company, Inc., thereby conferring on it the right to "construct, lay, maintain, use and operate" two pipe lines that subsequently became the Line 5 Dual Pipelines. The Easement further provided that the authorized lines could be used to transport material through pipelines "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."

27. The 1953 Easement states in its preamble that, in granting the easement, the Conservation Commission was 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." 1953 Easement, 2d Whereas Clause.

28. Based on the rights granted in the Easement, Enbridge constructed the Line 5 Dual Pipelines in 1953-54 and has operated the Dual Pipelines since that time to transport petroleum products with the full knowledge and concurrence of the State.

29. The 1953 Easement has no fixed termination date. Paragraph C of the Easement instead specifies three conditions under which the State, as grantor, may terminate the Easement. Conditions (2) and (3) address circumstances where Enbridge did not start construction of the pipelines or failed to make substantial use of the pipelines for an extended period. Neither of these Conditions has been met, and neither applies to this case.

30. Condition (1) of Paragraph C provides for termination “[i]f, after being notified in writing by Grantor [the State] of any specified breach of the terms and conditions of this easement, Grantee [now Enbridge] 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.”

31. The 1953 Easement remains in effect and has not been terminated in accordance with the Paragraph C.

C. Relevant Agreements with the State of Michigan

32. The Line 5 Dual Pipelines have been in operation since being placed into service in 1954. During those 65 years, there have been no releases from either of the Dual Lines into the Straits.

33. At various times the State has requested that Enbridge agree to restrictions not contained in the 1953 Easement. Enbridge voluntarily agreed in 2015 that it would not transport heavy crude on Line 5. Over the years the State has exercised its right under the Easement to seek information from Enbridge, and Enbridge has responded to those requests.

34. During the years 2017 and 2018, the State noted the current safety of the Line 5 Dual Pipelines and committed to their continued operation across the Straits pending replacement

of the Line 5 Dual Pipelines with a new line to be operated in the Straits Tunnel. The State's endorsement of these positions is memorialized in a series of written agreements entered into by the State and its agencies on the one hand, and Enbridge on the other.

35. First Agreement: In November 2017, Enbridge entered into what is referred to as the "First Agreement" with the State. The First Agreement recognized that "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 products, including Michigan-produced oil to refineries and manufacturers." The First Agreement was executed by then Gov. Rick Snyder and Enbridge.

36. The First Agreement further recites that "the State and Enbridge desire to establish additional measures and undertake further studies with respect to certain matters related to Enbridge's stewardship of Line 5 within Michigan and the transparency of its operation."

37. Accordingly, the measures set forth in the First Agreement were "intended to further protect ecological and natural resources held in public trust by the State of Michigan," and the terms of the First Agreement were intended to "serve Enbridge's interest by providing clarity as to the State's expectations concerning the safety and integrity of Line 5."

38. The First Agreement included the following substantive provisions:

- a. Measures to increase coordination and information sharing between the State and Enbridge concerning the operation and maintenance of the Line 5 Dual Pipelines;
- b. The replacement of Line 5's crossing of the St. Clair River;
- c. Discontinuation of Line 5 operations during sustained adverse weather conditions;
- d. An evaluation and implementation of measures to mitigate a potential vessel strike to the Line 5 Dual Pipelines;

- e. An evaluation of alternatives to replace the Line 5 Dual Pipelines; and
- f. An agreement to initiate discussions following the completion of the evaluation described above to enter into a further agreement concerning the operation of Line 5.

39. Second Agreement: Following negotiations with the State concerning the further agreement contemplated by the First Agreement, on October 4, 2018, Enbridge entered into what is referred to as the “Second Agreement” with the State, MDNR, and MDEQ. The Second Agreement was executed by the Directors of MDNR and MDEQ and Enbridge.

40. The Second Agreement supersedes the First Agreement in its entirety.

41. The Second Agreement specifically recognizes that Enbridge fulfilled obligations under the First Agreement as follows:

- a. “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;”
- b. “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;”
- c. “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;”

- d. “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,” and
- e. “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.”

42. The Second Agreement further recognizes that “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.”

43. The replacement contemplated under the terms of the Second Agreement is the construction of a new pipeline segment within the Straits Tunnel. The Straits Tunnel was identified as the only feasible alternative to the Line 5 Dual Pipelines in the 2017 independent, *Alternatives Analysis for the Straits Pipelines* report prepared at the request of the State (referred to hereinafter as “*Alternatives Analysis*”). The *Alternatives Analysis* concluded that the risks associated with the potential for a release to the Great Lakes from replacement pipeline constructed within such an underground Straits Tunnel were “negligible” and “un-quantifiably low.”

44. Enbridge’s own alternatives analysis, which was submitted to the State pursuant to the First Agreement on June 15, 2018, similarly “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.”

45. The Second Agreement obligated the State and Enbridge to enter into negotiations to execute other agreements for the design, construction, operation, management, and maintenance of the Straits Tunnel in which a replacement to the Line 5 Dual Pipelines would be constructed.

46. The State and Enbridge also agreed to the following, additional provisions under the Second Agreement in order to “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:”

- a. Measures to enhance coordination and information sharing concerning Enbridge’s operation and maintenance of Line 5, including the condition and integrity of the pipeline;
- b. A requirement continued from the First Agreement to complete the replacement of the Line 5 St. Clair River crossing after receiving all necessary governmental approvals and permits;
- c. Enhanced criteria for the shutdown of Line 5 Dual Pipelines during sustained adverse weather conditions;
- d. A requirement to perform close interval surveys every two years to monitor and assess the condition of the exterior of the Line 5 Dual Pipelines;
- e. A requirement to contribute \$200,000 to the U.S. Coast Guard for underwater cameras to mitigate potential anchor strikes to Line 5;
- f. A requirement that Enbridge conduct additional activities to mitigate a potential release into waters in Michigan crossed by Line 5 other than the Straits;
- g. A requirement that specified Enbridge entities maintain financial assurance of \$1.8 billion, which is the estimate of Enbridge’s potential total quantifiable response

liability for a worst-case discharge from the Line 5 Dual Pipelines as identified in a risk analysis commissioned by the State; and

- h. A requirement that Enbridge continue to conduct additional emergency response measures, including maintaining additional equipment and personnel.

47. The Second Agreement has not been terminated in accordance with the termination provisions set forth in Section IV of the Second Agreement and remains in effect.

48. Tunnel Agreement: On December 19, 2018, Enbridge entered into what is referred to as the “Tunnel Agreement” with the newly-formed, three-member MSCA. Execution of the Tunnel Agreement fulfilled the State and Enbridge’s commitment in the Second Agreement to negotiate a further agreement for the construction and operation of the Straits Tunnel. The Tunnel Agreement was executed by the Chair of the MSCA and Enbridge.

49. One goal of the Tunnel Agreement was “to allow for the discontinuation of service on the existing Line 5 Dual Pipelines’ crossing of the Straits” upon the “Straits Line 5 Replacement Segment” being placed into service “within the underground [Straits] Tunnel, and to allow for the possibility of other utilities to be moved from their current locations at the Straits and [placed] into the [Straits] Tunnel.”

50. To achieve that and other goals, Enbridge and the MSCA in the Tunnel Agreement agreed as follows:

- a. Enbridge would, at its sole expense, design, construct, operate and maintain the Straits Tunnel;
- b. Enbridge and the MSCA would jointly obtain all governmental approvals and permits required for the construction and/or operation of the Straits Tunnel;

- c. The MSCA would obtain rights to construct the Straits Tunnel within subsurface lands owned by the State and administered by MDNR;
- d. The MSCA would assign rights to such subsurface lands to Enbridge to allow it to enter, use, and occupy the subsurface lands of the State of Michigan to construct and operate the Straits Tunnel and the replacement Line 5 segment;
- e. Upon completion of the Straits Tunnel to the satisfaction of the MSCA, Enbridge would assign ownership of the Straits Tunnel to the MSCA; and
- f. The MSCA would issue a 99-year lease to Enbridge to authorize it to use and enter the Straits Tunnel for purposes of constructing, operating, and maintaining the replacement Line 5 segment within the Straits Tunnel.

51. In accordance with its obligations under the Tunnel Agreement, Enbridge has begun to implement the Straits Tunnel project. Actions to date have included applying for and obtaining the required MDEQ permit necessary to perform geotechnical borings in the Straits (“Geotechnical Permit”). The Geotechnical Permit was issued to Enbridge by the MDEQ on January 22, 2019.

52. Paragraph 7.3 of the Tunnel Agreement further provides that Enbridge will complete geotechnical investigations and provide the MSCA with a geotechnical data report by December 31, 2019.

53. The Tunnel Agreement has not been terminated in accordance with its provisions and remains in effect.

54. MDNR Easement: On December 17, 2018, MDNR issued an easement to the MSCA that authorizes the MSCA to use underground lands of the State to construct the Straits Tunnel (“MDNR Easement”). The issuance of this Easement satisfied MSCA’s obligation under

Section 3.1(a) of the Tunnel Agreement to acquire rights to subsurface lands owned by the State and administered by MDNR in which geotechnical investigations may be conducted and the Straits Tunnel may be constructed.

55. The MDNR Easement provides that the rights specified therein may be assigned by the MSCA “pursuant to and as a part of agreements or leases pertaining to the construction, operation, maintenance or decommissioning of a utility tunnel.”

56. The MDNR Easement granted to MSCA remains in effect. The Easement has not been terminated, rescinded, or revoked.

57. Paragraph 3.1(e) of the Tunnel Agreement prohibits the MSCA from amending or terminating the MDNR Easement without the written consent of Enbridge.

58. Assignment of MDNR Easement Rights to Enbridge: On December 19, 2019, the MSCA assigned to Enbridge rights under the MDNR Easement to construct the Straits Tunnel (referred to herein as the “Assignment of MDNR Easement Rights”).

59. Enbridge will rely on the Assignment of MDNR Easement Rights for purposes of conducting the geotechnical investigations and constructing the Straits Tunnel in the subsurface lands beneath the Straits.

60. The Assignment of MDNR Easement Rights remains in effect. The Assignment has not been terminated, rescinded, or revoked.

61. Third Agreement: On December 19, 2018, Enbridge and the State entered into the Third Agreement. The Third Agreement was executed on behalf of the State by then Governor Rick Snyder and the Directors of MDNR and MDEQ.

62. Under the Third Agreement, the State expressly agreed:

“Enbridge may continue to operate the Dual Pipelines, which allow for the functional use of the current Line 5 in Michigan,

until the Tunnel is Complete, and the Straits Line 5 Replacement [S]egment is placed in service within the Tunnel, subject to Enbridge's continued compliance with all of the following: (a) The Second Agreement; (b) The Tunnel Agreement; (c) The Third Agreement; (d) The 1953 Easement; and (e) All other applicable laws, including those listed in Section V of the Second Agreement." [Emphasis added.]

63. Subject to Enbridge's continued compliance with the requirements identified in the preceding Paragraph, the State expressly agreed under the Third Agreement as follows:

- a. "The work done and to be done at the water crossings pursuant to the Second Agreement adds protections to the health, safety, and welfare of Michiganders and increases protection for Michigan's environment and natural resources."
- b. "The replacement of the Dual Pipelines with the Straits Line 5 Replacement Segment in the Tunnel is expected to eliminate the risk of a potential release from Line 5 at the Straits."
- c. "In entering into this Third Agreement, and thereby authorizing the Dual Pipelines to continue to operate until such time that the Straits Line 5 Replacement Segment is placed into service within the Tunnel, the State has acted in accordance with and in furtherance of the public's interest in the protection of waters, waterways, or bottomlands held in public trust by the State of Michigan."
- d. "Based on currently available information, the State is not aware of any violation of the 1953 Easement that would not be addressed and cured by compliance with" certain measures described in the Third Agreement.

64. Under Paragraph 4.3 of the Third Agreement Enbridge committed to performing the enhanced inspection measures for the continued operation and maintenance of the Line 5 Dual Pipelines so long as they are in use.

65. Section 10.2 of the Third Agreement provides procedures by which the State is allowed to terminate the Third Agreement. The first step for termination by the State is for the State to notify Enbridge in writing of any material breach of the Third Agreement. As of the date of the filing of this Complaint, the State has not notified Enbridge of its intent to terminate the Third Agreement. Nor has Enbridge taken any step to terminate the Third Agreement as provided in Section 10.3 of the Agreement. The Third Agreement thus remains in effect.

D. The Attorney General's Opinion and Governor's Directive Have Cast Doubt on the Validity of the Tunnel Agreement and the Third Agreement

66. Notwithstanding the Tunnel Agreement, MDNR Easement, Assignment of Easement Rights, and Third Agreement, the State has now reversed course and seeks to void the 2018 Agreements and invalidate the establishment of the MSCA.

67. On January 1, 2019, the Governor issued a letter to Attorney General Nessel requesting that the Attorney General provide an opinion on a series of questions concerning whether Act 359 complies with the Michigan Constitution.

68. Among those questions was: "Does Act 359 violate the Title-Object Clause (Const. 1963, art 4, § 24) because it embraces more than one object, the object embraced is not stated in the law's title, or because SB 1197 was altered or amended on its passage through the legislature so as to change its original purpose?" The Title-Object Clause, Const. 1963 art 4, § 24, provides, in relevant part, that "[n]o law shall embrace more than one object, which shall be expressed in its title."

69. On March 8, 2019, this Court (Borrello, J.) ruled that the six-year terms provided by Act 359 for MSCA board members exceeded permissible constitutional limits, but that the unconstitutional length of the term of office did not affect the authority of otherwise validly appointed board members.

70. On March 28, 2019, the Attorney General issued an opinion asserting that three sections of Act 359 violate the Title-Object Clause and are therefore unconstitutional: §§ 14d(1), (4), and (5). The Attorney General did not address any other constitutional violations.

71. The Attorney General opined that the “main object or purpose” of Act 359 as reflected in its title is “the acquisition of a utility tunnel at the Straits of Mackinac by the Bridge Authority and the operation of such a tunnel by either the Bridge Authority or a newly created Corridor Authority.” The Attorney General further opined that the title failed to reveal other purposes of Act 359 and thus violates the Title-Object Clause in various respects.

72. Specifically, the Attorney General opined that neither § 14d(1), (4), nor (5) of Act 359 are “germane, incidental, or auxiliary” to the “main object or purpose” of Act 359 as reflected in its title and that these sections “which are unconstitutional under article 4, § 24 of the Constitution, cannot be severed from the remainder of the Act 359 because doing so would be inconsistent with the intent of the Legislature.”

73. In a March 28, 2019 letter to the Governor and the directors of the MDEQ and MDNR, the Attorney General summarized her opinion that “certain provisions of Act 359 . . . are unconstitutional,” and asserted that “under the legal analysis of the opinion, the Tunnel Agreement is likely to be found void.” In light of that conclusion and given what the Attorney General characterized as the “complete dependence of the Third Agreement upon the Tunnel Agreement,” the Attorney General further advised the Governor and the directors of the MDEQ and MDNR “to refrain from any further act to implement the Third Agreement.”

74. The Attorney General’s March 28, 2019 letter to the members of the board of the Corridor Authority summarized the Attorney General’s opinion that §§ 14d(1), (4) and (5) of Act 359 are unconstitutional, asserted that “Attorney general opinions have been deemed binding on

state agencies,” and advised the board “to refrain from any further action to implement [Act 359] and the [Tunnel Agreement].”

E. Executive Directive by the Governor

75. On March 28, 2019, and in response to Attorney General’s opinion concerning the constitutionality of Act 359, Governor Whitmer issued Executive Directive No. 2019-13 (“Governor’s Directive”), which directed the following:

- a. “State departments and autonomous agencies shall not take any action authorized by, in furtherance of, or dependent upon Act 359.”
- b. “Each state department and autonomous agency shall report to my legal counsel any actions taken by the department or agency that were authorized by, in furtherance of, or dependent upon Act 359.”
- c. “This directive is effective immediately.”

76. By way of the Governor’s Directive, the Governor directed all state agencies, including the MSCA, MDNR, and MEGLE not to comply with the Tunnel Agreement, MDNR Easement, Assignment of Easement Rights, and the Third Agreement.

77. As of the date of the Governor’s Directive, the State has deemed the Tunnel Agreement, MDNR Easement, Assignment of Easement Rights, and Third Agreement as null and void.

78. In order to complete the geotechnical investigation activities required by the Tunnel Agreement before the December 31, 2019 deadline, Enbridge planned to initiate the geotechnical investigations on June 11, 2019.

79. The Geotechnical Permit specifies in special instruction No. 13 that “[a]ll construction operations relating to or part of this project shall be confined to the existing acquired easements.” Given that the geotechnical boring locations are to occur outside of the 1953

Easement right-of-way, the MDNR Easement and Assignment of MDNR Easement Rights are necessary to provide Enbridge with the requisite rights to conduct the geotechnical borings on the submerged bottomlands of the Straits.

80. The Governor's Executive Directive, however, calls into question Enbridge's ability to rely on the MDNR Easement and Assignment of MDNR Easement Rights to conduct the geotechnical boring work consistent with the terms of the Tunnel Agreement.

**COUNT 1: REQUEST FOR DECLARATORY ORDER REGARDING
CONSTITUTIONALITY OF ACT 359 AND EFFECTIVENESS OF TUNNEL
AGREEMENT AND THIRD AGREEMENT AND VALIDITY OF ACTIONS TAKEN BY
THE MSCA**

81. Enbridge repeats and realleges each and every allegation in Paragraphs 1 through 80 as though fully set forth herein.

82. Pursuant to MCR 2.605, this Court has authority to declare the rights and legal relations of the parties to this action.

83. There exists an actual controversy between the parties in that the Governor, in reliance on the Attorney General's opinion regarding the constitutionality of Act 359, has directed that "[s]tate department and autonomous agencies shall not take any action authorized by, in furtherance of, or dependent upon, Act 359."

84. Enbridge seeks a declaration that Act 359 does not violate the Title-Object Clause as the Attorney General has opined and that the Tunnel Agreement and Third Agreement are therefore valid and fully enforceable.

85. The Attorney General has opined that §§ 14d(1), (4), and (5) are unconstitutional because they fail "title-body review."

86. Act 359 does not violate the mandate of Michigan's Title-Object Clause. The title reveals that its main general object or purpose of the Act is the acquisition and operation "of a . . .

utility tunnel connecting the Upper and Lower Peninsulas of Michigan.” In furtherance of that purpose, Act 359’s title explicitly refers to: (1) authorizing the Bridge Authority to “acquire . . . a utility tunnel; (2) “the creation of the Mackinac Straits corridor authority”; and (3) “authorizing the operation of a utility tunnel by [the Bridge Authority] or [the Corridor Authority.]”

87. Section 14d(1)’s transfer of the initial authority to “acquire” a utility from the Bridge Authority to the Corridor Authority is “germane, auxiliary, or incidental” to Act 359’s general purpose of acquiring and operating a utility tunnel across the Straits. The title’s use of the phrase “operation of a utility tunnel” when referring to the Corridor Authority’s role is also significant because it establishes a connection between the operation of a utility tunnel and its initial acquisition.

88. Section 14d(4)’s grant of authority to the Corridor Authority to enter into an agreement for the construction of a utility tunnel is likewise “germane, auxiliary, or incidental” to Act 359’s general purpose of acquiring and operating a utility tunnel across the Straits, as that purpose necessarily encompasses the tunnel’s construction.

89. Section 14d(5)’s requirement that the Attorney General either represent the Bridge Authority or Corridor Authority “in a matter related to the utility tunnel” or “provide for the costs of representation” is “germane, auxiliary, or incidental” to Act 359’s general purpose of acquiring and operating a utility tunnel across the Straits in that it seeks, among other things, to protect and maintain the utility tunnel’s viability.

90. In order to remove any doubt as to its rights in light of the Attorney General’s Opinion and the Governor’s Directive, Enbridge is entitled to a declaration that: (a) §§ 14d(1), (4), and (5) do not violate the Title-Object Clause as the Attorney General has opined; (b) the MSCA is validly formed under Act 359 and its action in entering the Tunnel Agreement is not void as a

result of some constitutional infirmity; and (c) the Tunnel Agreement and the Third Agreement are both valid and enforceable under Michigan law.

**COUNT 2: DECLARATION THAT MDNR EASEMENT AND ASSIGNMENT OF
EASEMENT RIGHTS REMAIN VALID**

91. Enbridge repeats and realleges each and every allegation in Paragraphs 1 through 90 as though fully set forth herein.

92. By virtue of the constitutionality of Act 359, the issuance of the MDNR Easement by MDNR to the MSCA and the Assignment of MDNR Easement Rights issued by the MSCA to Enbridge, are valid and enforceable under Michigan law.

93. In order to remove any doubt as to its rights under the Assignment of MDNR Easement Rights described above in light of the Attorney General's Opinion and the Governor's Directive, Enbridge is entitled to a declaration that the actions described in the preceding paragraphs of this Complaint are valid and enforceable actions.

RELIEF REQUESTED

For the reasons stated herein, Enbridge is entitled to the following relief:

- 1) A declaration by this Court that Act 359 does not violate the Title-Object Clause of the Michigan Constitution.
- 2) An order by this Court declaring that the Tunnel Agreement, Third Agreement, MDNR Easement, and Assignment of MDNR Easement Rights are valid and enforceable under Michigan law.
- 3) An order by this Court declaring that the MSCA is validly formed under Act 359 and that its actions are valid and legally enforceable.

4) An order by this Court declaring that the MDNR Easement and Assignment of MDNR Easement Rights provide Enbridge with the rights necessary to conduct geotechnical investigations and construct, operate, and maintain the Straits Tunnel, along with the Line 5 replacement segment within the Straits Tunnel.

5) An order by this Court enjoining Defendants from taking any action inconsistent with Tunnel Agreement, Third Agreement, MDNR Easement, and Assignment of MDNR Easement Rights.

6) Any other relief that the Court deems just and reasonable.

Respectfully submitted,

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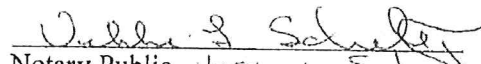
Dated: June 6, 2019

VERIFICATION

On behalf of Enbridge Energy, Limited Partnership, Enbridge Energy Company, Inc., and Enbridge Energy Partners, L.P. I declare that the statements above are true to the best of my information, knowledge, and belief.


BRADLEY F. SHAMLA

Subscribed and sworn to before me,
this 6th day of June, 2019.


Notary Public, VIKKI L. SCHULTZ
My Commission Expires: 1-17-2021
Acting in the County of Delta

VIKKI SCHULTZ
NOTARY PUBLIC - STATE OF MICHIGAN
My Commission Expires January 17, 2021
Acting in the County of Delta