

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
ENBRIDGE ENERGY, LIMITED PARTNERSHIP,)
for 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 Commission’s Rules of Practice)
and Procedure, R 792.10447, or the grant of other)
appropriate relief.)
_____)

Case No. U-20763

At the September 8, 2022 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Tremaine L. Phillips, Commissioner
Hon. Katherine L. Peretick, Commissioner

ORDER

Procedural History

On April 17, 2020, Enbridge Energy, Limited Partnership (Enbridge) filed an application with supporting testimony and exhibits pursuant to Public Act 16 of 1929, MCL 483.1 *et seq.*, and the Commission’s Rules of Practice and Procedure, Mich Admin Code, R 792.10447, requesting that the Commission grant Enbridge the authority for its project known as the Straits Line 5 Replacement Segment, which involves constructing a replacement segment of the Line 5 pipeline

that crosses the Straits of Mackinac (Straits).¹ On June 30, 2020, the Commission issued an order (June 30 order) indicating that the Commission would read the record. June 30 order, p. 70. The Commission also set this matter for a contested proceeding and invited the continued submission of written comments.

On August 12, 2020, a prehearing conference was held before Administrative Law Judge Dennis W. Mack (ALJ), at which intervention was granted to the Michigan Department of Attorney General; For Love of Water (FLOW); the Michigan Environmental Council (MEC), Grand Traverse Band of Ottawa and Chippewa Indians (GTBOC), Tip of the Mitt Watershed Council, and National Wildlife Federation (together, the MEC Coalition); Bay Mills Indian Community (Bay Mills); Environmental Law & Policy Center (ELPC) and Michigan Climate Action Network (MiCAN) (together, ELPC/MiCAN); Little Traverse Bay Bands of Odawa Indians (LTBB); Nottawaseppi Huron Band of the Potawatomi (NHBP); Michigan Laborers' District Council (MLDC); Michigan Propane Gas Association and the National Propane Gas Association (together, the Associations); and the Mackinac Straits Corridor Authority (MSCA). Enbridge and the Commission Staff (Staff) also participated. On August 13, 2020, the ALJ adopted a schedule for the case.

On August 24, 2020, the Commission held a public hearing on the application, where the Commissioners listened to oral comments from members of the public.

On September 14, 2021, direct testimony and exhibits were filed by LTBB, the Staff, MSCA, NHBP, Bay Mills, and ELPC/MiCAN.

¹ This order provides an abbreviated description of the background and procedural history of this matter. More detailed histories are available in the July 7, 2022, February 23, 2021, and June 30, 2020 orders in this matter.

On December 14, 2021, rebuttal testimony and exhibits were filed by Enbridge, the Staff, the Associations, Bay Mills, and ELPC/MiCAN. Cross examination took place on January 14-24, 2022. The record was closed on January 24, 2022.

On February 18, 2022, Bay Mills,² LTBB, GTBOC, and NHBP; ELPC/MiCAN; Enbridge; FLOW; MLDC; MSCA; the Staff; and the Associations filed initial briefs. On March 11, 2022, the Tribal Nations, ELPC/MiCAN, Enbridge, FLOW, the MEC Coalition,³ the Staff, and the Associations filed reply briefs.

On July 7, 2022, the Commission issued an order (July 7 order) reopening the record for the submission of additional evidence on specific issues described in the order. The Commission stated that no additional briefing would be permitted. July 7 order, p. 47.

On August 5, 2022, Enbridge, the Associations, and MLDC (together, joint petitioners) filed a joint petition for rehearing of the July 7 order pursuant to Mich Admin Code, R 792.10437 (Rule 437), seeking permission to file additional briefing (joint petition). On August 22, 2022, MSCA and Bay Mills each filed a response indicating no objection to the relief sought in the joint petition.

Petition for Rehearing

By way of background, the joint petitioners note that this proceeding already possesses an extensive record, including approximately 1,300 pages of testimony, over 8,000 pages of official exhibits, over 730 pages of initial and reply briefs, and thousands⁴ of public comments. The joint

² At this stage of the proceeding, Bay Mills was joined by GTBOC, LTBB, and NHBP, and they refer to themselves as the Tribal Nations in their initial brief.

³ At this stage of the proceeding, the MEC Coalition includes MEC, Tip of the Mitt Watershed Council, and the National Wildlife Federation.

⁴ The Commission notes that only comments filed after 6:00 p.m. (Eastern time) on August 6, 2022, appear in the new “Comments” section of the docket. All comments filed before that time appear under “Filings.”

petitioners note that additional evidentiary hearings have now been set for April 4-7, 2023, which will result in a supplemental evidentiary record. Joint petition, p. 5.

The joint petitioners argue that rehearing should be granted under Rule 437(1) because the ruling in the July 7 order regarding additional briefing will result in unintended consequences including potential reversal of the July 7 order or the final order based on error. Mich Admin Code, R 792.10434(2) (Rule 434(2)) states as follows:

(2) Initial briefs and reply briefs may be filed at the discretion of the parties unless the commission or presiding officer requires the filing of briefs and reply briefs by all parties. Unless otherwise provided, initial briefs shall be filed within 21 days after the date of the filing of the last volume of the transcript, and reply briefs shall be filed within 14 days after the date for filing initial briefs.

The joint petitioners contend that the plain language of Rule 434(2) provides that briefing is at the discretion of the parties and shall take place within 21 days after the filing of the final volume of the transcript for initial briefs, and within 14 days thereafter for reply briefs. The joint petitioners assert that the rule contains no language authorizing the Commission to dispense with this right. Joint petition, p. 6. The joint petitioners further assert that the Commission is required to follow the mandates of its own rules and may not change those rules other than through rulemaking under the Administrative Procedures Act of 1969, MCL 24.231 *et seq.* Joint petition, pp. 7-8. Finally, the joint petitioners contend that, on appeal, parties may raise challenges based on free speech and due process arguments if briefing is not permitted.

The joint petitioners aver that allowing additional briefing consistent with Rule 434(2) will not cause substantial delay and they propose page limits of 30 pages for initial briefs and 25 pages for reply briefs. Joint petition, p. 9. MSCA and Bay Mills do not object to the requested relief.

Discussion

Rule 437 provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. The Commission does not find any error or unintended consequences associated with the decisions in the July 7 order. Noting that Rule 434(2) contains the caveat “unless otherwise provided,” the Commission disagrees with the joint petitioners’ interpretation of the rule. However, the Commission observes that the joint petitioners’ request is reasonable, and finds that, pursuant to the agency’s authority as presiding officer, the relief requested should be approved. MCL 24.280(1)(d); MCL 24.279. The Commission finds that initial briefs of no more than 30 pages addressing the evidence presented in the supplemental record developed April 4-7, 2023, may be filed no later than May 5, 2023, and reply briefs of no more than 25 pages addressing the evidence presented in the supplemental record developed April 4-7, 2023, may be filed no later than May 19, 2023.

THEREFORE, IT IS ORDERED that:

A. The request to file additional briefing filed by Enbridge Energy, Limited Partnership, Michigan Laborers’ District Council, Michigan Propane Gas Association, and the National Propane Gas Association on August 5, 2022, is granted.

B. Initial briefs of no more than 30 pages addressing the evidence presented in the supplemental record developed April 4-7, 2023, may be filed no later than May 5, 2023, and reply briefs of no more than 25 pages addressing the evidence presented in the supplemental record developed April 4-7, 2023, may be filed no later than May 19, 2023.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Tremaine L. Phillips, Commissioner

Katherine L. Peretick, Commissioner

By its action of September 8, 2022.

Lisa Felice, Executive Secretary


PROOF OF SERVICE

STATE OF MICHIGAN)

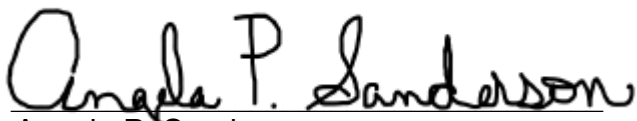
Case No. U-20763

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on September 8, 2022 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).


Brianna Brown

Subscribed and sworn to before me
this 8th day of September 2022.



Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

Service List for Case: U-20763

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