



Red Cliff Band of Lake Superior Chippewa Indians

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Red Cliff Tribal Council

May 13, 2020

VIA ELECTRONIC MAIL

mpscdockets@michigan.gov

Lisa Felice, Executive Secretary
Michigan Public Services Commission
7109 W. Saginaw Hwy
Lansing, Michigan 48917

RE: Red Cliff's Support of Bay Mill's Letter regarding Act 16 and Enbridge's MPSC Application Case No. U-20763

Executive Secretary Felice,

The Red Cliff Band of Lake Superior Chippewa (henceforth the Miskwabekaang) respectfully submits the following comments regarding Enbridge's recent application to the Michigan Public Services Commission (henceforth MPSC) regarding the construction of a tunnel to house their Line 5 pipeline in the Straits of Mackinac. Additionally, we fully support our Bay Mills Indian Community relatives and their letter (attached below) concerning Enbridge's assertion that their 1953 MPSC permit covers the proposed tunnel construction under the guise of "maintenance." We share Bay Mills's assertion that Enbridge's request for a declaratory ruling by the MPSC should be denied and that the proposed construction is not "maintenance" and should go through the standard Public Service Commission process just like any other major pipeline construction.

As Anishinaabeg, we followed the migis shell in search of manoomin, which is known as "the food that grows on water," "the good berry" or "wild rice" as our knowledge keepers and leaders were directed to. This journey brought many of us to the western Great Lakes, but for Miskwabekaang, our journey ended along the southwestern shores of Anishinaabeg Gitchigumi (Lake Superior). Like many other Anishinaabe tribes, we too retained usufructuary rights in the treaties we signed. This was a way to preserve our way of life and maintain stewardship authority. These treaties, 1837 Treaty of St. Peters, 1842 Treaty of LaPointe and 1854 Treaty of LaPointe ceded land that allowed for the creation of Michigan, Wisconsin and Minnesota. Unlike other Lake Superior Ojibwe tribes, the Red Cliff Reservation was not established in the 1854 Treaty of LaPointe. At that time, Miskwabekaang and Mashkiiziibii (Bad River Band of Lake Superior Ojibwe) were known as the LaPointe Band. When reservations were established under the 1854 Treaty of LaPointe. Ogemaa Bizhiki, Chief Buffalo, and some of his family refused to leave their fishing village and go to the reservation that is now where Mashkiiziibing (Bad River Reservation) is. In 1863, the federal government recognized the Miskwabekaang, the Red Cliff Band, and Ogemaa Bizhiki's home became the Red Cliff Reservation.

With support from state and federal agencies, Enbridge (formerly known as Lakehead) constructed Line 5 across Anishinaabewaki (Anishinaabe territory) without any sort of meaningful consultation. In Gete-oodenaang (known as Superior, WI), Line 5, a portion of the regional pipeline network, starts. Line 5 heads east in 1842 ceded territory (just east of the 1854 and 1842 treaty border), proceeds across 1836 Treaty of Washington ceded territory, enters

"The Hub of the Chippewa Nation"

1819 Treaty of Saginaw ceded territory and continues into 1807 Treaty of Detroit ceded territory. From there, it leaves the United States (but remains in Anishinaabewaki) and connects to the next segment of Enbridge's infrastructure in Crown Treaty 29 territory next to the Aamjiwnaang First Nation. At no point has Line 5 gone through a comprehensive environmental review or has a National Historic Preservation Act Section 106 review been conducted. Line 5 "starts" about 60 miles west of Miskwabeekang, and traverses ceded territory around our community. Enbridge is also operating in Mashkiiziibing under expired permits and without permission of the Tribe.

There are several local sections of Line 5 that are of especially high concern to us. One is in the Chequamegon-Nicolet National Forest (henceforth CNNF) where Enbridge is operating Line 5 under an expired Special Use Authorization Permit. Their permit expired in 2013 and they failed to apply for a new permit until June 4th, 2014 and called it an "oversight".¹ That State of Wisconsin prohibits individuals from being on energy infrastructure Right of Ways. According to this state law, tribal members can be sent to prison for practicing their treaty rights along the Line 5 corridor in the CNNF. Line 5 has also shown to alter the hydrology within Mashkiiziibing in several locations. This is one of the many unintended consequences by the construction of Line 5. Additionally, much of the western portion of Line 5 is within the Lake Superior Basin, which could be harmed by an oil spill. This reinforces the need to a comprehensive environmental review of the entire pipeline. Any time there is maintenance along the line, additional disturbance and desecration of culturally significant relatives and artifacts could occur. None of this touches on the concerns of our relatives further west-northwest (both those within what is known as the United States as well as those further north) of us along the Enbridge network nor do these concerns address those of our relatives further east (both within 1836 treaty territory and the Straits of Mackinac, but also where Line 5 "terminates" next to the Aamjiwnaang First Nation and further east along Enbridge's network).

Without intervention, Enbridge hopes to streamline the state regulatory process in the midst of a global health crisis with a project that could create an additional health crisis in the Great Lakes Basin if there were an oil spill. We ask you to act in accordance with Michigan law and in defense of Michigan residents and Anishinaabeg citizens. Miskwabekaang is urging you to uphold Bay Mills Indian Community's assertion that the 1953 MPSC permit does not allow for the proposed construction of a tunnel to be considered "maintenance" for the following reasons:

1. The request lacks any legal basis and runs counter to the Commission's regulations and rulings;
2. The request requires the Commission to ignore the requirement that it consider the environmental impacts of the Line 5 Project; and
3. The request would deprive Bay Mills and other impacted tribes the opportunity to participate in the proceedings, where they would raise substantial concerns about the Line 5 project under standards set forth in Public Act 16 and the Michigan Environmental Protection Act.

We remain committed to protecting nibi (water), aki (land), and air of our current and ancestral homelands for our people and the generations to come. Preserving the environment means preserving our treaty rights and our traditional life ways. Miigwech (thank you) for the opportunity to submit comments. Questions and follow-up can be directed to Linda Nguyen, Red Cliff Environmental Director, at linda.nguyen@redcliff-nsn.gov or 715-779-3650.

Sincerely,



Richard A. Peterson
Tribal Chairman
Red Cliff Band of Lake Superior Chippewa

Cc: Red Cliff Tribal Council
Marvin Defoe, Red Cliff Tribal Historic Preservation Office
Dave Ujke, Red Cliff Legal Department

¹ Johnson, Steve. "Special Use Permit Enbridge Energy, Holder No. 4014-01." Received by Johnathon McNeil, 4 June 2014.

Chad Abel, Red Cliff Treaty Natural Resources Division
Linda Nguyen, Red Cliff Environmental Department
Noah Saperstein, Red Cliff Environmental Department
GLIFWC Affiliated Tribes
CORA Affiliated Tribes
Lisa Felice, Executive Secretary MPSC

