



Warner Norcross + Judd LLP

August 5, 2020

Via E-Filing

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
P.O. Box 30221
Lansing, Michigan 48909

Re: **MPSC Case No. U-20763**

Dear Ms. Felice:

Enclosed please find the Michigan Propane Gas Association and the National Propane Gas Association's Petition to Intervene and Proof of Service.

Sincerely,

Paul D. Bratt

cc: Parties to Case No. U-20763

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In re Enbridge Energy, Limited Partnership	)	
	)	
Application for the Authority to Replace	)	
and Relocate the Segment of Line 5	)	
Crossing the Straits of Mackinac into a	)	Case No. U-20763
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	)	
_____	)	

**PETITION OF MICHIGAN PROPANE
GAS ASSOCIATION AND NATIONAL PROPANE
GAS ASSOCIATION FOR LEAVE TO INTERVENE**

The Michigan Propane Gas Association (“MPGA”) and the National Propane Gas Association (“NPGA”), by and through their attorneys, Warner Norcross + Judd LLP, respectfully petition for leave to intervene in the above-entitled action pursuant to Rule 410 of the Commission’s Rules of Practice and Procedure, R 792.10410. In support of this petition, MPGA and NPGA state as follows:

Factual Background

1. MPGA is a Michigan non-profit corporation representing all facets of the propane industry in the State of Michigan. MPGA has 205 members, with 97 of those members providing retail propane service to Michigan homes and businesses. MPGA represents the interests of the Michigan propane industry before municipal governments and State government as well as the Federal Government. The mission of the MPGA is to promote the proper handling and use of

propane, to work for a favorable environment for propane distribution and marketing, and to increase its application by demonstrating propane's value as a clean energy source.

2. Michigan consistently ranks among the largest propane-consuming states every year. The most recent data shows that Michigan consumers used approximately 570 million gallons of propane, making Michigan the largest propane-using state in the United States. Michigan citizens are the largest consumers of residential propane in the United States year after year. Nearly 1,500 people are employed in the propane industry in the State, and the propane industry contributes \$1.5 billion per year to the Michigan economy.

3. More than 300,000 Michigan households rely upon propane for space heating, water heating, cooking, and other applications. More than 20,000 of those households are in the Upper Peninsula.

4. NPGA, which is a New Jersey non-profit corporation, is the national trade association of the U.S. propane industry with a membership of about 3,000 companies, including 38 affiliated state and regional associations—such as MPGA— representing members in all 50 states. Although NPGA's membership is primarily composed of retail marketers of propane gas, other members of NPGA include propane producers, transporters, and wholesalers, as well as manufacturers and distributors of associated equipment, containers, and appliances. All propane retailers that are members of MPGA are also members of NPGA.

5. Propane is used in roughly 50 million American homes, with 11.9 million households using propane for either space or water heating, 5.8 million of which depend on propane as their primary space heating fuel. In addition, over 42 million homes use propane for outdoor grilling activities. In addition to the significant role propane plays in the residential sector, the propane industry directly serves 1.1 million commercial accounts, 184,700 industrial

accounts, and 504,700 agricultural accounts. Propane also continues to be the most common internal combustion fuel for forklifts and has rapidly become the third most common fuel for school buses behind gasoline and diesel fuels.

6. Several of NPGA's member companies are direct shippers of propane and/or direct customers or consumers of propane shipped on interstate pipeline systems such as Enbridge Energy, Limited Partnership Line 5 ("Line 5"). The interstate pipeline system, including Enbridge Line 5, plays a critical role in the supply of fuel to retail marketers year round, but particularly during the winter heating season's peak demand periods.

7. This docket involves an application by Enbridge Energy Limited Partnership ("Enbridge") for authority pursuant to 1929 PA 16; MCL 483.1 *et seq.* ("Act 16") to replace its existing Line 5 under the Straits of Mackinac with a new pipeline to be located in a tunnel underneath the Straits ("the Project").

8. The purpose of the Project is to alleviate an environmental concern to the Great Lakes raised by the State of Michigan and others relating to the approximately four miles of Enbridge's Line 5 that currently crosses the Straits of Mackinac. Line 5 is a fully operational 645-mile interstate pipeline, and the approximately four-mile segment that crosses the Straits lies on top of the lakebed with the exception of portions buried near each shoreline. The Project involves relocating underground the portion of Line 5 that crosses the Straits, within a tunnel to be located at a depth of approximately 60 feet to 250 feet beneath the lakebed of the Straits. Enbridge and the State of Michigan have entered into a series of agreements relating to, and facilitating, the relocation of this portion of Line 5 within such a tunnel. The Michigan Legislature has enacted 2018 PA 359 to create a state authority known as the Mackinac Straits Corridor Authority ("MSCA") and delegated to the MSCA authority to enter agreements

pertaining to the construction, operation, and maintenance of the tunnel to house the replacement pipe segment.

9. Line 5 transports approximately 540,000 barrels a day of light crude oil and natural gas liquids. The natural gas liquid stream accounts for approximately fifteen percent of the throughput of the pipeline. The major portion of the natural gas liquid stream is composed of propane. Propane is a naturally occurring hydrocarbon that is either liquid or gaseous depending upon temperature and pressure. In Line 5, propane is in a liquid state.

10. Some of the natural gas liquids carried by Line 5 are sent through a fractionator connected to Line 5 in Rapid River, Michigan. The fractionator removes propane from the stream and returns the remaining natural gas liquids to the pipeline. The volumes of propane from the Rapid River facility supply up to 65% of the propane market in the Upper Peninsula. From Rapid River, the natural gas liquid stream continues to Sarnia, Ontario, where fractionators again remove propane. A large portion of the propane that is removed in Sarnia returns to the Lower Peninsula through other pipeline systems. Between the facilities at Rapid River and Sarnia, Line 5 is responsible for approximately 50% percent of the propane consumed in the State of Michigan. (Additionally, some of the light crude carried by Line 5 goes to refineries in Sarnia where it is refined into propane and other products.)

11. Propane from Sarnia is also transported to markets in Indiana, Ohio, and New York. MPGA and NPGA are advised that some of this propane reaches markets as far east as Virginia.

12. Propane from Sarnia is also a major part of the propane consumed in the Eastern Provinces of Canada.

MPGA and NPGA's Interest and Grounds for Intervention

13. MPGA and NPGA members have direct and vital interests in the issues raised in this docket, and seek leave to intervene to protect those interests. See, e.g., *In re Application of the Detroit Edison Co for Authority to Increase its Rates*, Case Nos. U-15768 and U-15751, p 8 (January 11, 2010) (noting that an association may be granted intervention to represent the interests of its members); see also R. 792.10402(g)(vii); R. 792.10410.

14. There are two legal bases for a party to intervene in a proceeding before the Commission under Rule 410: intervention as of right and permissive intervention. MPGA and NPGA meet the standard for intervention both as a matter of right and on a permissive basis.

15. MPGA and NPGA meet the standards for intervention as of right. This Commission has repeatedly applied the two-prong test as set forth in *Association of Data Processing Service Organizations, Inc. v Camp*, 397 US 150 (1970), which has been applied to matters before the Commission. See, e.g., *In re Michigan Consolidated Gas Co*, MPSC Case No. U-10150 (December 8, 1992). As set forth in *Association of Data Processing*, the two-prong test consists of a showing that: (1) the petitioner would likely suffer injury in fact (i.e., its interests are endangered or at issue); and (2) the petitioner's interests that are allegedly endangered are within the zone of interests to be protected or regulated by the statute under consideration. See, e.g., *id.*

16. The members of MPGA and NPGA satisfy the "injury in fact" prong because denial of an Act 16 permit for the Project would make Line 5 less secure and may interfere with essential inputs for their businesses. Line 5 as it currently operates is the largest single source of supply for propane to serve Michigan consumers. It also is responsible for providing significant volumes of propane to other consumers in the Eastern United States. Should Line 5 go out of

service, the members of MPGA and NPGA would suffer injury because they would be deprived of the critical propane supply that Line 5 provides. A disruption in service would impose significant additional costs upon them, as well as the customers they serve. These costs may include identifying alternative sources of propane to meet demand, transporting propane from those sources, and constructing additional infrastructure to handle the drastic change in propane supply for the state of Michigan and the greater region.

17. MPGA and NPGA also meet *Association of Data Processing's* “zone of interests” prong because members of MPGA and NPGA and the customers they serve need the propane provided by Line 5 and the Project. The need for the pipeline under Act 16 is a central issue to be considered by the Commission in this proceeding. Accordingly, the interests of MPGA, NPGA, and their members fall within the zone of interests to be protected or regulated in this case.

18. Having demonstrated that their interests satisfy the two-pronged test for intervening as a matter of right, MPGA and NPGA respectfully submit that they are entitled to intervene in this proceeding as a matter of right.

19. Even if it were determined that MPGA and NPGA do not have standing as a matter of right, they would be entitled to intervene under the Commission’s permissive—or discretionary—intervention standards. “[T]he Commission’s discretion to grant leave to intervene is broader than the two-prong test. As recognized in prior Commission orders, the requirements for standing before the Commission are not as strict as those applied by the courts. Unlike a court of law, an administrative agency can allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenor’s participation.” *In re Michigan Consolidated Gas Co*, MPSC Case No. U-10150, p 5 (December 8, 1992) (finding that

discretionary intervention was appropriate, and “a detailed discussion of the two-prong test is unnecessary”).

20. Indeed, the two-pronged test does not apply when granting permissive intervention. “The granting of permissive intervention without satisfying the two-pronged test is a long-established Commission practice.” *In re DTE Gas Gas Co*, MPSC Case No. U-17332, p 4 (May 13, 2014).

21. Permissive intervention is appropriate where public policy warrants a party’s involvement because a prospective intervenor can provide useful information to the Commission or a unique perspective on the issues to be resolved. See, e.g., *In re Mascotech Forming Technologies, Inc.*, MPSC Case No. U-11057 (June 5, 1996); *In re MCI Metro Access Transmission, Inc.*, MPSC Case No. U-10610 (November 30, 1994); and *In the matter, on the Commission’s own motion, to investigate the appropriateness of instituting a surcharge to assist in the funding of the Gas Technology Institute*, MPSC Case No. U-14561 (October 18, 2005). The Commission has held that a proper case for permissive intervention exists when a proposed intervenor “could be expected to bring helpful information to the Commission’s attention that might not otherwise be available.” *In re International Transmission Co*, MPSC Case No. U-16200 (October 14, 2010).

22. “Permissive intervention has also been granted where a proceeding ‘raises novel questions and important policy issues’ and the intervenor will ‘bring a unique perspective’ to the case.” *In re DTE Gas Electric Co*, MPSC Case No. U-17319, p 10 (March 6, 2014), quoting, MPSC Case No. U-11057, pp 2-3 (June 5, 1996).

23. MPGA and NPGA speak for the propane industry in Michigan and nationally. They have a voice in this proceeding that is unique and goes to key issues that the Commission

must address. They are particularly well suited to bring new and helpful information to the Commission that might not otherwise be available. Indeed, MPGA and NPGA represent individuals and businesses that are primary users of propane carried through Line 5, and possess a deep understanding of the impact of the Commission’s decision in this case. Their members agree that Line 5 is critical for safe and reliable distribution of propane throughout Michigan and the broader region; energy distribution is interconnected on a global scale, and a disruption to Line 5 would have wide-reaching effects that MPGA and NPGA can specifically speak to as industry representatives. MPGA and NPGA bring a “unique perspective to the issues” in this proceeding as the Commission contemplated in its order of June 30, 2020, at 71.

24. MPGA and NPGA have demonstrated that they warrant intervention in this case both as of right and on a permissive basis.

MPGA and NPGA’s Position

25. As intervenors in this proceeding, MPGA and NPGA may argue that there is significant public need for the Project throughout Michigan and the broader region, especially Michigan households and businesses in the Upper Peninsula.

26. Additionally, MPGA and NPGA may argue that Line 5 is critical for the safe and reliable distribution of needed propane, and that there is no alternative option to the Project that is as efficient and practical as the Project.

27. MPGA and NPGA reserve the right to take positions on additional issues when it has had an opportunity to more fully review and analyze the positions of the other parties in this case.

28. The interests of MPGA and NPGA, and their members, as set forth above, are not adequately represented by the present parties and, therefore, it would be detrimental to the public interest to deny this Petition to Intervene.

29. Intervention by MPGA and NPGA will not cause delay. They will abide by the case schedule adopted by the presiding officer.

30. Because the issues set forth above are of great significance to MPGA and NPGA, a denial of this Petition would result in a miscarriage of justice.

31. Upon being granted intervenor status, MPGA and NPGA request that all notices and pleadings be served on the following persons:

Troy M. Cumings (P63278)
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Prayer for Relief

WHEREFORE, MPGA and NPGA hereby respectfully request that this Honorable Commission grant them Leave to Intervene under Rule 410 of the Commission's Rules of Practice and Procedure, R 792.10410, in the above-entitled proceedings as full parties of record.

Respectfully submitted,

WARNER NORCROSS + JUDD LLP

By:

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Date: August 5, 2020

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