

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

BAD RIVER BAND OF THE LAKE SUPERIOR
TRIBE OF CHIPPEWA INDIANS OF THE BAD
RIVER RESERVATION,

Plaintiff,

v.

ENBRIDGE ENERGY COMPANY, INC., and
ENBRIDGE ENERGY, L.P.,

Defendants.

Case No. 3:19-cv-00602-wmc

Judge William M. Conley
Magistrate Judge Stephen L. Crocker

ENBRIDGE ENERGY COMPANY, INC., and
ENBRIDGE ENERGY, L.P.,

Counter-Plaintiffs,

v.

BAD RIVER BAND OF THE LAKE SUPERIOR
TRIBE OF CHIPPEWA INDIANS OF THE BAD
RIVER RESERVATION and NAOMI
TILLISON,
in her official capacity,

Counter-Defendants.

**AMICUS CURIAE BRIEF OF THE GREAT LAKES BUSINESS NETWORK
IN OPPOSITION TO ENBRIDGE'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Table of Contents

Introduction.....	1
Interests of Amicus Curiae.....	2
Argument	4
I. ..Enbridge and the Oil Industry Amici have greatly exaggerated the costs of shutting down Line 5, which in fact will be minimal.....	4
II.Enbridge’s claims of corporate responsibility and competence are contradicted by its conduct in Michigan	10
Conclusion	14

Introduction

Enbridge Defendants have filed a Motion for Partial Summary Judgment on several claims brought by the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation (“the Band”) in the above-captioned case. The Chamber of Commerce and the American Petroleum Institute (“Oil Industry Amici”) have filed amicus briefs in support of Enbridge’s Motion and are opposed to the decommissioning of Line 5 on the Band’s Tribal lands, the relief sought by the Band. Enbridge and the Oil Industry Amici make exaggerated and incorrect claims that the shutdown of Line 5 on the Band’s land will have severe impacts on jobs, consumers and the regional economy. The Great Lakes Business Network (“Business Network”) files this brief, as amicus curiae, in support of the Band’s Opposition to Enbridge’s Motion for Partial Summary Judgment.¹

Amicus curiae Business Network represents the interests of over 200 business leaders and small businesses throughout the States of Michigan and Wisconsin. All of them depend on affordable and reliable regional energy supplies. The Business Network, accordingly, is in a unique position to assist the Court in assessing the actual consequences to businesses and consumers from a Line 5 closure. Enbridge and the Oil Industry Amici make a fundamental error that runs through their entire analysis: they claim that there are no viable alternatives to Line 5 in supplying refineries and consumers with oil and propane. This assumption is demonstrably false, as independent studies, the Band’s experts, and Enbridge’s own experts reveal. Rail, truck, and

¹ No party’s counsel authored this brief in whole or in part. No one other than amicus curiae made a monetary contribution to fund the preparation or submission of this brief.

other pipelines can replace all of Line 5's oil and propane at competitive (and in places, lower) rates. Consumer prices and jobs will feel virtually no impact from a Line 5 shutdown.

If the consequences of shutting down Line 5 were as dire as Enbridge claims, Business Network members would also be damaged – they would suffer from the energy shortages and price hikes claimed by Enbridge and the Oil Industry Amici. But businesses in the Business Network know better. Their businesses operate successfully by truck and rail, and they know that the oil industry has those and other options to deliver oil and propane to their businesses and others in the region. They are not concerned about energy supply or price due to Line 5's closure because they know that the supply will continue uninterrupted and that the price changes, if any, will be minimal. They are far more concerned about the impact of Line 5's continued operation and the risk of rupture to their businesses.

The Business Network, representing the interests of many Michigan and Wisconsin businesses, respectfully requests that this Court deny Enbridge's Motion for Partial Summary Judgment and grant the Band the relief it seeks.

Interests of Amicus Curiae

Amicus curiae, the Great Lakes Business Network (“Business Network”) is an unincorporated association of businesses and business leaders in the Great Lakes region. The Business Network is “fact-based, non-partisan, and focused on pragmatic advocacy to help set the Great Lakes agenda.”² The stated goal of the Business Network is “to be the leading business voice for protecting the health and vitality of the Great Lakes and the economy, businesses, and communities that depend upon them.”³ All of these businesses depend on the purity and quality

² *About GLBN*, GREAT LAKES BUS. NETWORK, <https://glbusinessnetwork.com/great-lakes-business-network/> (last accessed June 14, 2022).

³ *Id.*

of the Great Lakes. They are quite concerned about the entirety of Line 5 and its likelihood to spill oil into the Great Lakes, and particularly about the potential for a rupture in the Bad River, with its potential for contaminating Lake Superior. And they are confident that the closure of Line 5 will not have any significant negative impacts on their businesses.

The Business Network has attracted member-businesses from a wide array of industries, all of which are significant to the Michigan and Wisconsin economies. The Business Network has grown from its 11 founding businesses to over 200 member-business, including Lake Charlevoix Brewing Company, Short's Brewing Company, Lakefront Brewery, Patagonia, Bar Fly, Cherry Republic, Keweenaw Mountain Lodge, Sleeping Bear Surf & Kayak, Shepler's Ferry, and Beth Price Photography. Larger member-companies, such as Bell's Brewery, Patagonia, and Cherry Republic, have broad market reach in their respective industries across the region. However, each and every business in the Business Network contributes to the region's rich business economy, and many depend on the Great Lakes for survival.

For example, Michigan's and Wisconsin's craft beer industry—including Business Network members Bell's Brewery, Lake Charlevoix Brewing Company, Barrel and Beam, Short's Brewing Company, and Lakefront Brewery—relies on the reputation, marketing, and branding associated with the clean pure water of the Great Lakes. The Great Lakes also provide critical water resources for the brewing process itself. As Richard Bergmann of Lake Charlevoix Brewing described:

We draw our water from the Charlevoix municipal system, sourced directly from Lake Michigan. Water of the highest quality is what makes it possible for us to succeed and employ 65 people, while helping to build the economic base for Charlevoix and the surrounding area.⁴

⁴ Richard Bergmann, *Lake Charlevoix Brewing Co.*, GREAT LAKES BUS. NETWORK, <https://glbusinessnetwork.com/partners/lake-charlevoix-brewing-co/> (last accessed June 14, 2022)

In stark contrast, the image of the Great Lakes flooded with crude oil when a Line 5 spill occurs will certainly obliterate the business reputation and sales of these essential Michigan and Wisconsin breweries, resulting in untold financial loss and the forfeiture of thousands of beverage-related jobs.

The health of Lake Superior is of particular concern to many Business Network members whose businesses would be damaged by a rupture of Line 5 in the Bad River and the resulting oil contamination of the lake. For example, Barrel and Beam, a brewery in Marquette, relies on water from Lake Superior to brew its beer. A spill from Line 5 into the Lake Superior would not only threaten its water supply, but also its reputation and brand. The Keweenaw Mountain Lodge in Copper Harbor, Michigan, situated half a mile from Lake Superior, is a jumping-off place for boating, kayaking and eco- and adventure tourism on the Lake and the peninsula. An oil spill at Bad River would constrain those activities and discourage tourists from staying at the Lodge. Both businesses are concerned they would suffer losses from an oil spill at Bad River.

Argument

I. Enbridge and the Oil Industry Amici have greatly exaggerated the costs of shutting down Line 5, which in fact will be minimal

Enbridge and its supporting amici manufacture claims of massive economic harm from the shutdown of Line 5: skyrocketing gasoline and other fuel prices, thousands of jobs lost, major facilities closed, and energy shortages, among other impacts. API, Docket Document # (“Dkt.”) 240 at 8-9. They then amplify these speculations by linking them to the current consumer price increases associated with the oil shocks due to Russia’s war against Ukraine. Chamber, Dkt. 237 at 3, 6. But their dystopian future is fiction, contradicted by Enbridge’s own experts, the historical record, credible independent reports, and highly qualified experts from the Band.

First, the actual impact of decommissioning Line 5 on consumer prices: Amicus API, relying on an industry-backed report, says, “[i]f Line 5 shuts down, families and businesses across the Midwest will spend at least \$23.7 billion more on gasoline and diesel over the following five years due to the resulting loss of production at area refineries.” Dkt. 240 at 8.

Enbridge itself directly and irrefutably contradicts this claim. Enbridge’s own expert, Neil Earnest, in his expert report submitted in this case, concluded: “The estimated impact of a Line 5 shutdown on Wisconsin and Michigan gasoline, jet fuel, and diesel prices **is an increase of 0.5 cents per gallon.**” Dkt. 262 at 12 (emphasis added). That conclusion is worth repeating: ***Enbridge says that shutting down Line 5 will raise prices at the pump by only one-half of one cent per gallon.***

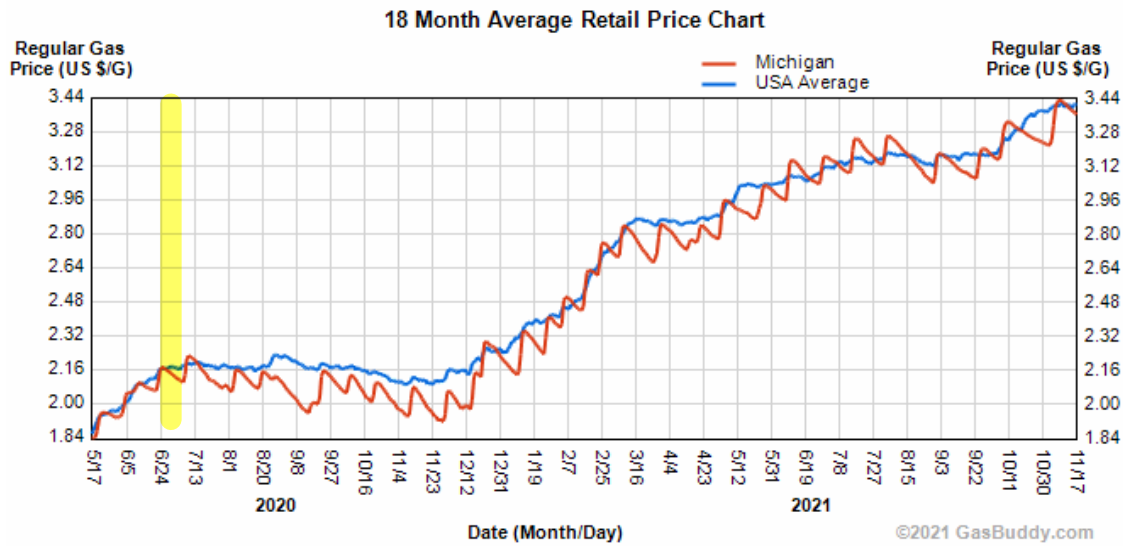
The historical record supports that conclusion. Line 5 has already been shut down with no impact on gasoline prices in the U.S. or Canada. In 2020, after the dual lines in the Straits were struck by a cable that damaged their supports, a state court ordered both legs of Line 5 to shut down for a week and one leg to shut down for 78 days.⁵ During that period, gasoline prices in Michigan and Toronto actually *declined*, and were also lower than the United States and Canadian average prices in that time frame.⁶ The charts below show the gas prices in the United States and Canada during the 2020 Line 5 closures. The pipeline was completely shut down from June 25 – July 2, 2020 (indicated by the colored bar on both charts). The charts show that the price of gasoline in Michigan and Toronto actually declined during that period, in absolute terms and

⁵ Gus Burns, *Enbridge Line 5 Remains Shut Down Pending Michigan Judge’s Ruling*, MLIVE.COM (June 30, 2020), <https://www.mlive.com/public-interest/2020/06/enbridge-line-5-remains-shut-down-pending-michigan-judges-ruling.html>; Kelly House, *Judge: Enbridge can resume full operations on Line 5 pipelines*, THE BRIDGE (Sept. 9, 2020) <https://www.bridgemi.com/michigan-environment-watch/judge-enbridge-can-resume-full-operations-michigan-line-5-pipeline>.

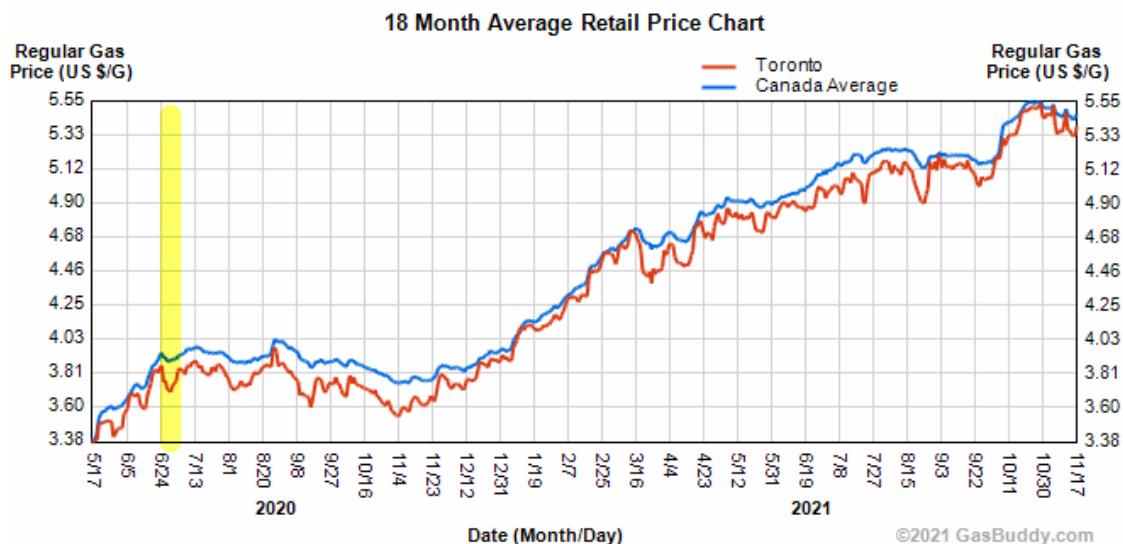
⁶ Laina G. Stebbins, *Study: Partial Line 5 Shutdown Has Not Impacted Gas Prices, Despite Enbridge Warnings*, MICH. ADVANCE (Aug. 10, 2020), <https://michiganadvance.com/2020/08/10/study-partial-line-5-shutdown-has-not-impacted-gas-prices-despite-enbridge-warnings/>.

relative to the U.S. and Canadian average prices. The eastern leg of the dual lines was shut down through September 10, 2020, reducing Line 5 capacity by 50% (270,000 barrels per day, or “b/d”)—and again, gasoline prices in Michigan and Toronto declined during that period, both absolutely and relative to their national averages.

**FIGURE 1—MICHIGAN GASOLINE PRICES COMPARED TO THE ENTIRE U.S.
COMPLETE LINE 5 SHUTDOWN JUNE 25 TO JULY 2, 2020
PARTIAL LINE 5 SHUTDOWN JULY 3-SEPTEMBER 10, 2020**



**FIGURE 2 --TORONTO GASOLINE PRICES COMPARED TO ENTIRE CANADA
COMPLETE LINE 5 SHUTDOWN JUNE 25 TO JULY 2, 2020
PARTIAL LINE 5 SHUTDOWN JULY 3-SEPTEMBER 10, 2020**



The Enbridge and Oil Industry Amici’s attempts to connect a Line 5 shutdown to the current gasoline price spikes and the war in Ukraine are simply fearmongering. The gasoline price spikes are happening now, while Line 5 is open and transporting oil. Enbridge’s own expert says the impact of shutting down the line will be half of one cent per gallon, and according to the historical record, even that might be high. Line 5’s oil flow is simply irrelevant to prices at the pump for Michigan and Wisconsin consumers.⁷

The impact of decommissioning Line 5 on propane consumption and prices in Michigan and Wisconsin would also be minimal. In 2019, Michigan Governor Gretchen Whitmer, through executive order, created the Upper Peninsula Energy Task Force. The Task Force commissioned an economic analysis of propane supply alternatives by Public Sector Consultants (“PSC”). PSC concluded that any shortfall in propane supply from a disruption to Line 5 could be overcome through a combination of readily available alternatives that include delivery of propane by rail, truck, and pipeline from Edmonton, Alberta, and Conway, Kansas. In particular, the lowest cost option would rely primarily on delivery by rail from Edmonton, Alberta, which would likely only increase propane spot market prices by 4 cents per gallon.⁸

PSC has provided further analysis of the propane markets for this case. There, they conclude that under current conditions, consumers in Wisconsin are likely to pay *less* for propane than they would otherwise if Line 5 shuts down and suppliers switch to rail—a *savings* of 3 cents per gallon, which would save the average Wisconsin household \$37.42 per year. The propane for

⁷ Oil Industry Amici introduce a scattershot of pipeline scare stories from a host of locations across the country, none of them relevant to Line 5. Chamber, Dkt. 237 at 4-6; API, Dkt. 240 at 8. As an example, the Chamber raises fuel shortages in 2018 from the 60-day shutdown of the Colonial Pipeline. Chamber, Dkt. 237 at 5. The implicit comparison to a shutdown to Line 5 is illogical. In addition to Line 5 carrying crude oil and not gasoline (as Colonial Pipeline did), Line 5 was actually shut down in 2020, two years after the Colonial Pipeline, and there was absolutely no impact on gasoline prices. See text *supra* at 5-7.

⁸ *Analysis of Propane Supply Alternatives for Michigan*, PUBLIC SECTOR CONSULTANTS 67 (2020) https://www.michigan.gov/documents/egle/egle-psc-upetf-Report_Analysis_of_Propane_Supply_Alternatives_for_Michigan_683751_7.pdf.

Michigan's Upper Peninsula would have a relative increase of 5 cents per gallon, at an average household cost increase of \$56.52 annually; and the propane for Michigan's Lower Peninsula would experience a relative price increase of only .02 cents per gallon, for an annual average household cost increase of \$.030 (30 cents a year). Dkt. 254-1 at Exh. 2, 24. Ontario would experience a relative rise in propane prices of only 3.2 cents per gallon. Dkt. 254-1 at Exh. 2, 37.

The Enbridge and Oil Industry Amici claims on job impacts fare no better. These claims suffer from a fundamental mistake: they assume there are no alternatives in the region for oil and propane other than Line 5 and then, based on that false assumption, draw conclusions of job loss and economic collapse. "Line 5 has 'no alternative,'" according to the Chamber, Dkt. 237 at 9; *see also* API, Dkt.240 at 8-9. Enbridge, elsewhere in the litigation, spins a tale of woe from these phantom oil and propane shortages:

As is the case in Canada, alternative transportation of the crude oil handled by Line 5 is not readily available. No other pipeline capacity exists. Rail is also not available, as the required rail loading and unloading infrastructure is either completely lacking at some of the refineries that depend on Line 5 or this infrastructure is inadequate at others. It could take years before that infrastructure is developed, assuming that financing could be made available and the needed infrastructure permitted. Meanwhile, shortages in critical energy products would persist. (citations omitted), Dkt. 207 at 116.

This foundational assumption is demonstrably false. There are viable alternatives to Line 5, from oil and propane transportation to processing, that will maintain existing jobs and protect the precious natural resources of the Great Lakes. Rail, truck, waterborne tanker, and other pipelines are available to supply oil and propane to refineries, businesses and consumers in quantities that would completely substitute for the oil and NGLs carried by Line 5.

Using the numbers from Enbridge's expert, Line 5 carries approximately 446,000 b/d of oil to refineries in Michigan, Ohio and Sarnia, Ontario, which process some of the oil and send some of it to other refineries in Quebec and Pennsylvania. Dkt. 262 at 14. Line 5 also supplies up to 80,300 b/d of NGLs for propane to refineries in Michigan and Sarnia. Dkt. 262 at 14.

Multiple experts have demonstrated that the oil and propane from many other sources can more than make up for the Line 5 supply in those specific refineries. One major alternative is Line 78, a 10-year-old Enbridge pipeline that currently has the capacity to carry 570,000 b/d of oil from south of Chicago to the Michigan, Ohio, and Sarnia refineries. That capacity is not being fully used now, and even more significantly, Enbridge built the pipeline large enough to carry 800,000 b/d, an increase of 230,000 b/d, to a hub in Michigan where it can be transported to refineries by other pipelines, rail and truck. Dkt. 265-2 at Exh. 2, 5. To increase Line 78's capacity by 230,000 b/d, all Enbridge has to do is install additional pumping stations—no new pipeline construction is necessary. Dkt. 255-1 at Exh. 2, 45. That expansion will more than replace the Line 5 oil in Michigan and Ohio (where the gap is only 57,000 b/d, according to Enbridge's expert, Dkt. 262 at 71), and close most of the gap in Sarnia.

Another source of oil for the region is tankers. Oil tankers already provide the Montreal refineries with some oil; they can increase that supply by 201,000 b/d, substituting for all of those refineries' Line 5 oil and enabling them to send additional oil to Sarnia refineries. Dkt. 255 at Exh. 2, 53. According to a transportation logistics expert Graham Brisbane, the CEO and founder of Professional Logistics Group, with 29 years of experience in the field and the author of over 234 articles and presentations in the field, "[t]his waterborne imports displacement strategy combined with a Line 78 expansion *would create a new supply level larger than the total shortfall* that the [Enbridge experts] predict from a Line 5 closure" (emphasis added). Dkt. 255 at Exh. 2, 54.

Rail and truck are other sources of oil and propane for refineries and consumers in the region. If needed, those sources can make up all of the Line 5 oil, Dkt. 261-1 at Exh. 2, 10-11, and at competitive rates, Dkt. 261 at 13. But if Line 78 and oil tanker transportation are expanded, they would only have to provide a small fraction of the overall supply. And as noted in the previous section, rail and truck are available to provide the entire region with propane—in some cases at lower costs than the current Line 5 supply.

These experts demonstrate individually and collectively that all of the oil and propane from Line 5 can be supplied to refineries from other sources, and the experience of Business Network members confirms that conclusion. Shutting down Line 5 will have no negative impact on the jobs at those facilities and in the larger economy.

II. Enbridge's claims of corporate responsibility and competence are contradicted by its conduct in Michigan

Enbridge makes claims to this Court that the Band's concerns about Enbridge's willingness and ability to remediate the pipeline as it crossed the Bad River are unreasonable, Dkt. 231 at 21, 25, and elsewhere in the litigation asserts that it can reroute the pipeline around the reservation in a safe and effective way, Dkt. 207 at 8, 131. The Band's response brief effectively shows that the pipeline remediation would be unlawful and non-viable, Dkt. 286 at 26-32, and the Business Network supports those views. In addition, examined in the context of Enbridge's conduct in Michigan and across the region, Enbridge's ability and willingness to complete both proposed projects safely should be viewed with skepticism. Enbridge's track record is replete with dangerous ineptitude and systematic dissembling to government authorities.

Enbridge’s overall safety record is abysmal – it has experienced 29 spills totaling over a million gallons of oil released along Line 5’s route over the last 50 years.⁹ Enbridge’s response to the Line 6B spill into the Kalamazoo River is instructive. The 2010 Line 6B spill in the Kalamazoo River was made possible by years of corrosion and pipeline neglect permitted by Enbridge that led to a break in Line 6B beneath a major tributary to the Kalamazoo River. As a result, Line 6B spewed more than one million gallons of crude oil into Michigan waterways and caused over \$1 billion in damage—making it the largest land-based oil spill in U.S. history.¹⁰ More than a decade later, the impact of the Kalamazoo River spill still lingers, and several nearby businesses have never recovered.¹¹

Enbridge’s operational detection of and response to the spill was appalling. Despite claiming that it had state-of-the-art leak detection technology, including pressure differential alarms that sounded in its headquarters in Alberta, CA, Enbridge never discovered the rupture.¹² For 17 hours, its operators in Alberta interpreted the pressure differential as a bubble in the pipeline and pumped more oil through the line to try to break up the non-existent bubble.¹³ The leak was only discovered when a local utility worker smelled oil in the area and called the local public health authorities.¹⁴ The federal National Transportation Safety Board conducted an

⁹ Malewitz and Mauger, ‘History of failure’ highlights Line 5 risks outside Straits of Mackinac, BRIDGE (July 11, 2018), <https://www.bridgemi.com/michigan-environment-watch/history-failure-highlights-line-5-risks-outside-straits-mackinac>.

¹⁰ *Kalamazoo River Oil Spill*, COLUMBIA LAW SCHOOL (May 19, 2015), <https://climate.law.columbia.edu/content/kalamazoo-river-oil-spill#:~:text=It%20was%20the%20largest%20land,%241.2%20billion%20to%20clean%20up>.

¹¹ Brad Devereaux, *10 Years Ago, Kalamazoo River Oil Spill was “An Awakening” in Pipeline Debate*, MLIVE.COM, (July 22, 2020), <https://www.mlive.com/news/kalamazoo/2020/07/10-years-ago-kalamazoo-river-oil-spill-was-an-awakening-in-pipeline-debate.html>.

¹² NAT’L TRANS. SAFETY BD., No: PAR-12-01, ENBRIDGE INCORPORATED HAZARDOUS LIQUID PIPELINE RUPTURE AND RELEASE, MARSHALL, MICHIGAN, JULY 25, 2010, at xii (July 10, 2012), <https://www.nts.gov/investigations/AccidentReports/Reports/PAR1201.pdf>

¹³ *Id.*

¹⁴ *Id.* at 3

investigation and published a report, concluding, “The rupture and prolonged release were made possible by pervasive organizational failures at Enbridge. . .”¹⁵

Enbridge has claimed that it has changed since 2010—that it has a new safety culture and has invested heavily in spill prevention and detection. But in 2019 Enbridge had a spill of over 1,200 gallons on its Line 13 in Wisconsin, threatening nearby water wells.¹⁶ Enbridge did not report the spill to state authorities for a full year.¹⁷ In one two-month period in 2021 Enbridge caused 28 spills of drilling fluids in quantities as high as 9,000 gallons as it reconstructed Line 3 in Minnesota – one in a river, thirteen in wetlands, and the rest on land.¹⁸ In 2011 it spilled between 29,400 and 63,000 gallons of oil from its northern Canada pipeline.¹⁹ And Line 5 spilled 840 gallons in Sterling, Michigan, in 2012—one of nine spills on Line 5 since 2010, according to a government database.²⁰

Even within the Straits of Mackinac, where there has been intense scrutiny from Michigan agencies, the public and Enbridge itself, Enbridge continues to bungle its operations. Enbridge admitted in 2020 that its own vessels were likely responsible for a cable dragged across the underwater pipeline that damaged the line and resulted in a court ordering the pipeline temporarily shut down.²¹ In 2021, a 7-ton anchor was dropped and abandoned by Enbridge

¹⁵ *Id.* at xii

¹⁶ *Enbridge Line 13 Spill Timeline*, MADISON.COM (May 27, 2021) https://madison.com/enbridge-line-13-spill-timeline/html_65e6b665-75c4-5bfd-8d3e-cd1ae0f982dd.html

¹⁷ *Id.*

¹⁸ Rilyn Eischens, *Enbridge Line 3 drilling fluids: What we know so far*, MINNESOTA REFORMER (Aug. 16, 2021), <https://minnesotareformer.com/2021/08/16/enbridge-line-3-drilling-fluid-spills-what-we-know-so-far/>

¹⁹ *No coverup in N.W.T. pipeline leak: Enbridge*, CBC NEWS (June 7, 2011)

<https://www.cbc.ca/news/canada/north/no-coverup-in-n-w-t-pipeline-leak-enbridge-1.1029611>

²⁰ Pipeline & Hazardous Material Safety Admin., *Distribution, Transmission & Gathering, LNG, and Liquid Accident and Incident Data*, U.S. DEPT. TRANSP. (last updated June 1, 2022), <https://www.phmsa.dot.gov/data-and-statistics/pipeline/distribution-transmission-gathering-lng-and-liquid-accident-and-incident-data>.

²¹ ENBRIDGE, INVESTIGATION OF DISTURBANCES TO LINE 5 IN THE STRAITS OF MACKINAC DISCOVERED IN MAY AND JUNE OF 2020 8 (Updated August 21, 2020); *see also* Laina G. Stebbins, *New: Coast Guard Concludes Line 5 Damage Caused by Enbridge Vessels, Denies Anchor Ban Request*, MICH. ADVANCE (Sept. 8, 2020), <https://michiganadvance.com/2020/09/08/new-coast-guard-concludes-line-5-damage-caused-by-enbridge-vessels-denies-anchor-ban-request/>.

between the dual pipelines, retrieved by Enbridge only after a state demand.²² That same year another Enbridge vessel collided with a support structure of the Mackinac Bridge.²³

Through all this, Enbridge has continually misled the government agencies responsible for ensuring that its operations are safe. Its conduct in Michigan is illustrative. From 2015 to 2018, the State of Michigan convened a Pipeline Advisory Board focused on Line 5's operations in the Straits and headed by the directors of the Michigan Agency on Energy and the Department of Natural Resources. The Michigan Board took extensive testimony from Enbridge on the safety of Line 5, with a particular focus on the coating on the pipeline designed to protect it from corrosion. Enbridge, in early 2017, assured the Board that there were no gaps or breakdowns in the coating. Then in August Enbridge admitted that there were several "Band Aid sized" gaps in the coating. Just a month later in September, Enbridge was required by federal consent decree to disclose its own inspection reports on the coating and revealed that in fact there were at least eight coating gaps, that seven of them were quite large, and that Enbridge had known about these gaps since 2014, three years before it told the state of Michigan that no such gaps existed.²⁴

Enbridge's repeated falsehoods to the Michigan Advisory Board prompted Valerie Brader, then-executive director of the Michigan Agency on Energy and co-chair of the Advisory Board, to say, "[w]e are deeply disappointed that Enbridge did not tell the Pipeline Safety Advisory Board in March the whole story about Line 5 coating deficiencies . . . Enbridge owes

²² Garret Ellison, *Enbridge ordered to remove 7.5-ton anchor left near Line 5*, MLIVE, (July 23, 2021) <https://www.mlive.com/public-interest/2021/07/enbridge-ordered-to-remove-75-ton-anchor-left-near-line-5.html#:~:text=MACKINAW%20CITY%2C%20MI%20%E2%80%94%20The%20state,under%20the%20Straits%20of%20Mackinac>.

²³ Garret Ellison, *Enbridge contract boat crashed into Mackinac Bridge, authorities say*, MLIVE (Nov. 12 2021), <https://www.mlive.com/public-interest/2021/11/enbridge-contract-boat-crashed-into-mackinac-bridge-authorities-say.html>.

²⁴ Keith Matheny, *Enbridge didn't tell state about Mackinac Straits pipeline problems for 3 years*, DETROIT FREE PRESS (October 27, 2017), <https://www.freep.com/story/news/local/michigan/2017/10/27/enbridge-staits-pipeline-coating-michigan/807452001/>.

the people of Michigan, the Advisory Board and the State an apology. This issue is too important to the people of Michigan to not tell the truth in a timely manner, and right now any trust we had in Enbridge has been seriously eroded."²⁵ Michigan's governor at the time, Rick Snyder, stated, "I am no longer satisfied with the operational activities and public information tactics that have become status quo for Enbridge. It is vitally important that Enbridge immediately become much more transparent about the condition of Line 5 and their activities to ensure protection of the Great Lakes."²⁶ And then-Attorney General Bill Schuette said, "This latest revelation by Enbridge means that the faith and trust Michigan has placed in Enbridge has reached an even lower level. Enbridge needs to do more than apologize, Enbridge owes the citizens of Michigan a full and complete explanation of why they failed to truthfully report the status of the pipeline."²⁷

The Band's mistrust of Enbridge is well-founded. The company's track record calls into serious question its ability to safely remediate the pipeline on the Band's lands or to construct a leak-proof pipeline that bypasses the reservation.

Conclusion

The contrast between the generalized, pro-oil comments of two professional Washington-based lobbying groups, and the specific, regional concerns of hundreds of corporate citizens, supporting tens of thousands of employees and their families in the Great Lakes area, could not be more stark, both in objective credibility and in the measurable data underlying their positions. The Business Network members are not speculating or aggrandizing about the costs of

²⁵ *Id.*

²⁶ Keith Matheny, *Enbridge discloses 'dozens' more gaps on Straits of Mackinac pipeline's protective coating*, DETROIT FREE PRESS (November 14, 2017), <https://www.freep.com/story/news/local/michigan/2017/11/14/enbridge-discloses-dozens-more-gaps-straits-mackinac-pipelines-protective-coating/863490001/>

²⁷ Matheny, *supra* note 24. Note that these comments by Michigan officials pre-dated by over two years the litigation Michigan initiated against Enbridge to shut down Line 5, and that the litigation was brought by a subsequent gubernatorial administration.

a Line 5 shutdown; they will have to live with the consequences and they are confident (based on highly credible expert analysis) that those consequences are minimal to nonexistent -- that the supply of energy will remain reliable, that prices will stay virtually the same, and that the regional economy will not be affected. On the other hand, these business owners *know* that their companies will be damaged or destroyed by a Line 5 rupture and that they face existential risks imposed by the continued operation of Line 5 in the Great Lakes and its tributaries.

For the foregoing reasons, *amicus* Great Lakes Business Network respectfully requests this Court deny the Enbridge Defendant's Motion for Partial Summary Judgment and grant the Band the relief it seeks: the decommissioning of Line 5 on the Band's reservation lands.

Dated: June 16, 2022

Respectfully submitted,



Andy Buchsbaum (*admitted pro hac vice*)
Buchsbaum & Associates, LLC
1715 David Court
Ann Arbor, MI 48105
734-717-3665
buchsbauma@gmail.com