

April 7, 2021

Chairman Dan Scripps  
Commissioner Tremaine Phillips  
Commissioner Katherine Peretick  
Michigan Public Service Commission  
7109 W. Saginaw Highway  
Lansing, MI 48917

RE: MPSC Case No. U-20763

Dear Chairman Scripps, Commissioner Phillips, and Commissioner Peretick:

As you undertake your review of Enbridge Energy's proposed oil pipeline tunnel, the undersigned organizations and individuals submit this letter to (1) urge you to include evidence related to the environmental effects of climate change, and to determine this evidence is relevant and admissible in conjunction with your review of this project; and (2) reassure you that you have ample statutory and state constitutional authority to reach such a determination and to actually consider climate-related evidence in conjunction with your review of this proposal for new fossil fuel infrastructure beneath the Great Lakes. We also urge you to include critically important evidence of the environmental risks and the absence of significant public need for extending the life of the Line 5 oil pipeline.

### **Background**

In this time of climate emergency, governments and leaders at all levels must consider the potential impacts of climate change in all long-term decision-making processes, especially in a case such as this, where the Commission will be deciding whether to allow the construction of new fossil fuel infrastructure that, if built, is expected to remain in place for decades to come, and up to 99 years. While climate change is truly a global crisis, we are experiencing the impacts of this crisis in our state right now. Here in Michigan, over the past year climate change has contributed to major flooding, catastrophic dam failures, extreme fluctuations in lake levels, heat waves, and powerful storms that disrupted power for hundreds of thousands of Michiganders. Extreme weather events now cost communities across the United States more than \$100 billion in economic losses each year.<sup>1</sup> These climate change impacts are causing disproportionate harm to communities of color, low-income families, and indigenous communities, both here in Michigan and across the country. These are the same communities that have long suffered disproportionate and cumulative harm from pollution by the very same industries most responsible for significant greenhouse gas (GHG) pollution. Scientists have made it clear that we must achieve net zero carbon emissions across the whole of our economy as quickly as possible to avoid the worst consequences of the climate crisis that is at our doorstep.<sup>2</sup>

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<sup>1</sup> NOAA National Centers for Environmental Information (NCEI) U.S. Billion-Dollar Weather and Climate Disasters (2021). <https://www.ncdc.noaa.gov/billions/>, DOI: 10.25921/stkw-7w73

<sup>2</sup> IPCC 1.5 report.

Decades of intentional misinformation and the persistent efforts to undermine scientific evidence of climate change has delayed policy action to reduce GHG emissions.<sup>3</sup> If action had been taken sooner to reduce such emissions, our state and the world would likely be experiencing less suffering and destruction, and we would have more options before us to avoid the worst impacts of a warming planet.

All of this background is of vital importance as the Commission now considers whether evidence pertaining to the climate crisis can be introduced as part of these oil tunnel proceedings. Narrowing the scope in this case to prohibit climate-related evidence would follow the old path of denial and exclusion that has brought us to this point. We can no longer afford to ignore climate change in decision-making.

### **Global Momentum**

Fortunately, decision makers and governments across the globe are taking action to address climate change with the urgency that science demands, including the 196 nations that adopted the Paris Climate Agreement and its goal to limit global warming to well below two (preferably to 1.5) degrees Celsius. Governor Whitmer has issued executive actions that commit Michigan to cut GHG emissions economy wide by 2050, and President Biden has also taken executive action to require all federal agencies to expressly consider climate in decision-making generally, and notably in all federal infrastructure investments specifically, as a means to reduce climate pollution. Cities and other local municipal governmental entities are also including climate in decision-making, with 132 U.S. localities having now declared a climate emergency, and with most major U.S. cities having plans to cut their own GHG emissions,<sup>4</sup> including several cities in Michigan.

These leaders and governments recognize that, in the midst of this climate crisis our elected and appointed officials have both a duty and a responsibility to include climate change in their decision-making, and to take concrete actions to limit the GHG drivers of the climate crisis. However, their courageous actions will not achieve what is necessary if agencies and other decision-making bodies do not follow suit. The purpose of this letter is to ensure that each of you understands that this responsibility extends to all state agencies making decisions on fossil fuel infrastructure, including the three of you on the Michigan Public Service Commission (MPSC), and this ill-conceived project proposal that is now before you.

### **The Decision is Yours**

At the end of the day, the determination as to whether the climate-related impacts of this oil tunnel proposal from Enbridge will be considered by the State of Michigan falls to you. As numerous legal experts have confirmed, and as intervening parties have briefed in the recently submitted legal briefs, your Commission is well within its legal authority to consider climate change in conjunction with this project proposal, and we urge you in the strongest possible terms to make the decision to receive such evidence into the record and to weigh that evidence as appropriate under the broad discretion granted to you under the Michigan Environmental

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<sup>3</sup> Banerjee N, Cushman NH Jr., Hasemyer D, Song L. *Exxon: The Road Not Taken*. Inside Climate News (2015).

<sup>4</sup> Living Cities Report (2009) Green Cities: How Urban Sustainability Efforts Can and Must Drive America's Climate Change Policies.

Protection Act (MEPA; MCL §324.1701 *et seq.*)<sup>5</sup> and “Act 16” (Public Act 16 of 1929; MCL §483.1 *et seq.*).

MEPA requires state agencies such as the MPSC to determine whether a proposed activity will pollute, impair, or destroy the air, water or other natural resources or the public trust in those resources.<sup>6</sup> GHG emissions that contribute to climate change clearly fall into this category. Scientific evidence has established that GHG emissions have environmental impacts, and evidence pertaining to the magnitude and importance of those impacts has been more thoroughly developed and compiled over the past thirty years by organizations such as the Intergovernmental Panel on Climate Change (IPCC). Carbon dioxide (CO<sub>2</sub>) is widely understood to be the most prevalent of the greenhouse gases,<sup>7</sup> and the increased emissions of CO<sub>2</sub> is likely to pollute, impair, or destroy Michigan’s natural resources and environment.

The magnitude of these impacts must be determined and considered by the Commission under MEPA and the state constitution. Intervening organizations are ready to introduce evidence from highly qualified expert witnesses so that the Commission can fully evaluate the net greenhouse gas emissions that would result from this project. These witnesses include Dr. Peter Erickson, Senior Scientist with Stockholm Environment Institute, who will calculate the increased GHG emissions resulting from this project, and Dr. Peter Howard, Economics Director from New York University School of Law’s Institute for Policy Integrity, who will quantify the environmental, public health, and social welfare costs associated with the GHG emissions resulting from construction of the proposed oil tunnel. Including this evidence would undoubtedly result in more informed decision-making.

We already know (based on publicly available information) that, when burned, the oil carried in Line 5 contributes more GHG emissions than the three most polluting coal-fired power plants in the country combined. Scientists can now calculate GHG emissions in a way that considers all emissions that a facility enables, rather than solely focusing on emissions from end sources; and through this methodology, research has found that 9 out of the top 10 carbon polluters in the U.S. are actually oil and gas pipelines.<sup>8</sup> Remarkably, researchers of one recent study found that Enbridge is one of the companies most responsible for climate emissions in the U.S.<sup>9</sup> It confounds reason to exclude evidence about climate change when deciding whether to site an oil pipeline that may, in fact, turn out to be one of the greatest sources of climate pollution in the country.

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<sup>5</sup>As you are likely aware, Article IV, Section 52 of the Michigan Constitution of 1963 declares that the conservation Michigan’s environment and natural resources are “of **paramount public concern** in the interest of the health, safety and general welfare of the people,” such that “[t]he legislature **shall** provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.” (MICH CONST OF 1963, Art. IV, §52 (emphasis added). In passing MEPA, the legislature was acting in fulfillment of this constitutional duty.

<sup>6</sup> MCL §324.1705(2).

<sup>7</sup> See Global Climate Change: Legal Summary, SN044 ALI-ABA 275, 280 (Feb. 2008); see also U.S. Energy Information Administration, Emissions of Greenhouse Gases in the United States 2004 (December 2005) at 12 (based on Intergovernmental Panel on Climate Change IPCC Third Assessment Report).

<sup>8</sup> Pascaris AS, Pearce JM. U.S. Greenhouse Gas Emission Bottlenecks: Prioritization of Targets for Climate Liability. *Energies*. 2020; 13(15):3932. <https://doi.org/10.3390/en13153932>

<sup>9</sup> As quoted in: Derouin, S. The Surprising Source of Greenhouse Gas Emissions. *Eos*. 1 March 2021. <https://eos.org/articles/the-surprising-source-of-greenhouse-gas-emissions>

It is clear why Enbridge does not want climate evidence included in this case. Enbridge is working within each permit for this oil tunnel to limit scope and review, which is causing major gaps in critical review of the project, prevents meaningful public participation, and greatly limits a review of public need and impact. This limited scope only benefits Enbridge, it in no way reflects the interests of the public, and it creates great risk and liability for Michigan, who will own this tunnel once complete and will be responsible for the additional climate emissions it releases.

While we expect you to hear from Enbridge and others who would argue that consideration of climate-related evidence is unwarranted or impermissible, we know that the consideration of such evidence is not only permissible but is actually required under Michigan law as set forth above. We urge you to not exclude this valuable evidence from the record and from consideration in this process, because doing so would be contrary to Michigan law and will result in a decision-making process that fails to consider all relevant evidence pertaining to the potential pollution, impairment, or destruction of the state's natural resources.

### **Public Need and Environmental Risk**

Furthermore, we urge you to include evidence related to the other significant environmental risks associated with this project, and we urge you to include evidence related to the absence of public need for this proposed project, especially in this time of rapidly falling demand for oil and a rapid shift in investment toward renewable energy and conservation. Act 16 requires a public need analysis. Simply put, if Michiganders do not need the oil in this pipeline, then there is no need for this project. So much has changed since 1953 relative to oil supply and demand and Michigan's energy needs that Enbridge's claim that the public need determination from 1953 should still be considered is unreasonable. There are other alternatives to building this new oil tunnel that would not continue to risk the heart of the Great Lakes and Michigan's economy; one such example includes the use of excess capacity in Enbridge's greatly expanded Line 78 (formerly Line 6B) oil pipeline.

Enbridge's argument to exclude this information was also premised on the continued existence of the 1953 easement and continued operation of the dual pipelines under the easement. Governor Whitmer's action to revoke Enbridge's easement has shifted the facts and the dynamics of this proposed project in an important and fundamental way. This is no longer about merely "relocating" Line 5 into a tunnel, which would still extend the life of an aging oil pipeline for decades to come. With the Governor's revocation of the easement, Enbridge's tunnel proposal is now a request to build an oil pipeline that is intended to replace one that has been shut down. Given this new situation, the central questions of climate impacts, environmental risk, and public need are even more important.

As you rightly pointed out in your December 9, 2020 Order, with the "revocation and termination of the 1953 easement, the facts have changed." Further, Michigan's Governor has announced a public need to move away from the fuels transported by this project with Executive Directive 2020-10, that includes a commitment to reduce GHG emissions by 2025 and achieve carbon neutrality by 2050. How construction of this project would affect the public need to meet Michigan's climate objectives as outlined in the Governor's Executive Directive fits within the scope of an Act 16 public need analysis.

Building this massive fossil fuel-dependent project will have significant impacts on our climate and our state. In the midst of the burgeoning climate crisis, it would be irresponsible to narrow the scope of the review of this project so severely that the most important issues are excluded. We urge you to include evidence about climate change, public need, and the significant environmental risks in your review of Enbridge's proposed oil tunnel project, and to overturn Administrative Law Judge Mack's decision to exclude these essential issues from consideration.

Sincerely,