

STATE OF MICHIGAN
IN THE SUPREME COURT

In re APPLICATION OF ENBRIDGE ENERGY
TO REPLACE AND RELOCATE LINE 5.

FOR LOVE OF WATER,

Appellant,

SC No. 168346
COA No. 369163
PSC No. 00-020763

v.

MPSC, MACKINAC STRAITS CORRIDOR
AUTHORITY, MICHIGAN PROPANE GAS
ASSOCIATION, NATIONAL PROPANE GAS
ASSOCIATION, and MICHIGAN LABORERS'
DISTRICT COUNCIL,

Appellees,

and

ENBRIDGE ENERGY LIMITED
PARTNERSHIP,

Petitioner-Appellee.

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GREAT LAKES BUSINESS NETWORK'S
AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT FLOW

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INTRODUCTION

The Great Lakes Business Network (“Business Network”) is composed of more than 200 businesses concentrated geographically around the Great Lakes and predominated by local Michigan companies.¹ The Business Network asks this Court to ensure the public trust doctrine is properly considered as the State decides whether to approve a tunnel for an oil and gas pipeline that could destroy our businesses and devastate the Great Lakes. The Michigan Public Service Commission (MPSC) improperly refused to consider the public trust when it approved the private construction and operation of Enbridge’s tunnel through Great Lakes bottomlands to house the Line 5 pipeline, and the Court of Appeals compounded that error. But Michigan common law and the Michigan Environmental Protection Act (MEPA) require agencies to comply with the public trust doctrine when considering the private use of State natural resources, and the Great Lakes Submerged Lands Act provides the standard and forum for agency decision-making when those resources include the Great Lakes bottomlands. Proper consideration of the public trust doctrine would protect the interests of Business Network members, other businesses, the people of Michigan and the Great Lakes themselves.

The business owners of the Business Network are concerned about Line 5 because of its high likelihood of an oil spill—either from the existing dual lines or the proposed tunnel. Any oil spill in the Great Lakes would gravely injure our businesses and communities that depend on the water and the Lakes. For that reason, the Business Network has been closely following the multiple cases challenging Line 5, including the tunnel proceeding before the Michigan Public Service

¹ No counsel for a party authored this brief in whole or in part. No party, counsel for a party or person other than the Business Network and its members made a monetary contribution intended to fund the preparation or submission of the brief.

Commission and the appeal of the MPSC decision to the Michigan Court of Appeals. We are not a political organization. We are business realists, with responsibilities to the employees, investors, customers, and local and state governments that we support.

As businesses who rely not only on the Great Lakes but also on oil and propane for energy, the Business Network has repeatedly assessed whether its members would be able to obtain energy if the tunnel application was denied and Line 5 were to shut down. As detailed below, we are completely confident that there are feasible and prudent alternatives to Line 5 that would provide comparably-priced oil and propane. Neither Line 5 nor the tunnel are necessary for the energy security of our member businesses. But the Great Lakes are essential for our survival, and Line 5 and the tunnel put them at needless risk.

The common law, MEPA, and the Great Lakes Submerged Lands Act require that the tunnel be assessed through the lens of the public trust doctrine. MEPA requires every agency, including the MPSC, to apply the public trust doctrine to its decision-making; and the Submerged Lands Act directs that whenever Great Lakes bottomlands are at issue, that public trust consideration must be done by Michigan's Department of Environment, Great Lakes and Energy (EGLE) applying the standards required by the Submerged Lands Act. The MPSC has failed to apply the public trust doctrine in any form to its decision-making and the Court of Appeals has blessed that failure. We support FLOW's request that the Court remand this matter to the MPSC and order the agency to deny Enbridge's tunnel application unless and until EGLE makes the determinations required under the public trust doctrine.

INTEREST OF AMICUS BUSINESS NETWORK

Amicus curiae the Great Lakes Business Network is an unincorporated association of prominent businesses and business leaders in the Great Lakes region. The Business Network seeks

to foster “thriving ecosystems, economies, and communities” in the Great Lakes area.² Each member business depends on the purity and quality of the Great Lakes and their reputations as healthy and beautiful lakes.

The Business Network has attracted member-businesses from a wide array of industries, all of which are significant to the Michigan economy. It has steadily grown from 11 founding businesses to over 200. Larger member-businesses, such as Bell’s Brewery, Patagonia, and Cherry Republic, have broad market reach in their respective industries across the region. Each and every business in the Business Network contributes to the region’s rich economy, and many of them depend on the health and reputation of the Great Lakes for survival.

The craft beer industry in Michigan, which provides the State with nearly \$1 billion in economic value per year,³ is just one industry that depends on the vitality of the Great Lakes. Richard Bergmann, the owner of Bridge Street Tap Room and a Business Network member, credits the environmental health of the Great Lakes with sustaining his business. Upon joining the Business Network, Bergmann stated:

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

² Great Lakes Business Network, *About GLBN* <<https://glbusinessnetwork.com/great-lakes-business-network/>> (accessed January 20, 2026).

³ Haley Hansen, Lansing State Journal, *What’s Craft Beer Worth to the State of Michigan?* <<https://www.lansingstatejournal.com/story/news/2019/05/15/craft-beer-worth-state-michigan-state-economy-msu/1166262001/>> (May 15, 2019).

⁴ Richard Bergmann, Great Lakes Business Network, *Bridge Street Tap Room* <<https://glbusinessnetwork.com/>> [scroll to GLBN member testimony and click the left arrow] (accessed January 20, 2026).

Bell's Brewery, too, depends on the health and vitality of the Great Lakes to remain marketable. One of its more popular brews is Lager for the Lakes, which it says was "inspired" by the Great Lakes. "[F]resh water is so vital in many ways...The name is intentional: it's a reminder that great beers require clean water."⁵

Bell's Breweries was gravely threatened by the Kalamazoo River oil spill in 2010, which resulted after Enbridge's Line 6B had been so neglected by Enbridge that it corroded and then ruptured beneath a tributary to the Kalamazoo River, causing over \$1 billion worth of damage. Line 6B sent about one million gallons of oil into the Kalamazoo River over the course of 17 hours.⁶ This oil spill was one of the largest inland oil spills in U.S history and took more than 7 years to clean up. Many businesses that depended on those waters did not survive.⁷

As failed clean-up efforts dragged on, Business Network members took note of the haunting similarities between the Enbridge-operated pipelines in Kalamazoo and the segment of Line 5 beneath the Straits of Mackinac. These two 20-inch pipes sitting on the lakebed, or unevenly suspended above it, are 15 years older than, and have been subject to almost the exact same lack of maintenance as, the ruptured pipeline in Kalamazoo. Worse, the Line 5 dual lines are vulnerable to anchor strikes and in fact have been struck by anchors twice in the past eight years, denting or

⁵ Bell's Brewery, *Lager for the Lakes* <<https://bellsbeer.com/news/lager-for-the-lakes-bells-new-beer-thats-crisp-refreshing-and-timeless/>>.

⁶ Jeff Alexander & Beth Wallace, National Wildlife Federation, *Sunken Hazard* at 2, 5 <https://www.nwf.org/~/media/PDFs/Regional/Great-Lakes/NWF_SunkenHazard.ashx> (October 8, 2012).

⁷ Drew YoungeDyke, National Wildlife Federation, *Seven Years Later, Kalamazoo River Oil Spill Cleanup Still Ongoing* <<https://www.nwf.org/Home/Latest-News/Press-Releases/2017/6-9-17-Seven-Years-Later-Kalamazoo-River-Oil-Spill-Cleanup-Still-Ongoing>> (June 9, 2017).

otherwise damaging the pipeline both times.⁸ Business Network members are also concerned about the risks of oil spills into the Great Lakes elsewhere on Line 5—along the shores of Lakes Superior, Michigan and Huron, where Line 5 has already leaked more than 1.1 million gallons of oil on 29 known occasions.⁹

The MPSC has taken the position that burying the pipeline in a tunnel would eliminate this risk. But Business Network members are concerned that the proposed tunnel is not a solution. As detailed below, the tunnel creates a new set of risks of oil leaks and explosions while delaying the decommissioning of Line 5. And none of those risks are necessary because in fact Line 5 itself is logistically and economically unnecessary.

When the pipeline does eventually fail—through the rupture of the dual lines or an explosion or leak from the tunnel—the damage to the Great Lakes, tribal communities and others who depend on the Great Lakes will be immeasurable. Michigan Technological University used a NOAA oil dispersal model for the Straits to analyze the scale of contamination from a rupture and concluded that up to 2,000 kilometers of shoreline and 1,700 square kilometers of the open waters

⁸ Mark Tower, MLive, *Broken Cables Capped as Straits of Mackinac Spill Response Continues* <https://www.mlive.com/news/grand-rapids/2018/04/broken_cables_capped_as_strait.html> (April 30, 2018); Beth LeBlanc, The Detroit News, *Enbridge-contracted Vessels Among Those Suspected in Damage to Line 5* <<https://www.detroitnews.com/story/news/local/michigan/2020/07/23/enbridge-contracted-vessels-suspected-cause-line-5-damage/5471556002/>> (July 23, 2020).

⁹ Garret Ellison, MLive, *Enbridge Line 5 has spilled at least 1.1M gallons in the past 50 years* <https://www.mlive.com/news/2017/04/enbridge_line_5_spill_history.html> (Aug. 26, 2017).

of Lakes Huron and Michigan would be blanketed by the oil spill.¹⁰ Drinking water, fisheries, aquatic life and wildlife will all be devastated.¹¹

More than the environmental health of the Great Lakes is at stake here. The very livelihoods of members of the Business Network, as well as surrounding communities, will be imperiled by an oil spill from the tunnel. When the tunnel ruptures in the Straits of Mackinac it will cause cataclysmic damage to the health, image, and reputation of the Great Lakes. This damage will seep into and decimate the rich business economy in Michigan that depends upon the health and safety of the Great Lakes. Most, if not all, Michigan businesses (including numerous Business Network members) will suffer irretrievably lost profits. Many businesses will never recover.

The vitality and survival of Michigan's and the Great Lakes region's outdoor recreation industry is uniquely bound to the environmental health and safety of the Lakes. According to the Bureau of Economic Analysis, in 2020, outdoor recreation in the State of Michigan accounted for over 118,000 jobs, with wages totaling \$6.4 billion and \$13.9 billion value added to the Michigan GDP.¹² In 2014, "over 113 million visitors spent over \$22 billion in Michigan alone" visiting the

¹⁰ Michigan Technical Institute, See *Independent Risk Analysis for Straits Pipelines, Final*, at pgs 69, 71 <https://www.michigan.gov/psab/-/media/Project/Websites/psab/archive/media/Straits_Independent_Risk_Analysis_Final.pdf?rev=7ec49ca4abd847b4a2542fcd083674fe&hash=37C49779A2B68A3EB79B85CA42AC7B93> (September 15, 2018).

¹¹ See *Id.*

¹² Michigan Trails & Greenways Alliance, *The Outdoors Generated \$13.9 Billion for Michigan's Economy*, <<https://michigantrails.org/advocacy/the-outdoors-generated-13-9-billion-for-michigans-economy/#:~:text=In%202023%2C%20thousands%20of%20Michiganders,million%20to%20the%20state's%20economy>> (November 22, 2024).

Great Lakes.¹³ According to the National Beer Wholesalers Association, the craft beer industry—in which many Business Network members participate and lead—supports 66,900 jobs in Michigan and contributes more than \$9.9 billion to the State’s economy.¹⁴

When Line 5 or the tunnel ruptures, each of the eight Great Lakes States will feel the negative economic impact from the damage it will cause to the Great Lakes. This is confirmed by a Michigan Technical Institute study that concluded that a Line 5 rupture could result in at least \$1.37 billion in economic damages due to lost tourism income, harm to fisheries and fishing, other recreational damage, and public health costs.¹⁵ However, even that number dramatically underestimates the economic impact to the State’s Pure Michigan brand and the tourism and recreation dollars that would be lost. A subsequent study from a Michigan State University expert puts the damage from a major spill much higher, at \$5.6 billion.¹⁶

An oil spill in the Great Lakes—from the dual lines lying now at the bottom of the Straits or from a leak from the tunnel—would be devastating to the 200 members of the Business Network and the Great Lakes economy as a whole. The Business Network has assessed the evidence and concluded that the risks of such a disaster are substantial and completely unnecessary because

¹³ Michigan Sea Grant, *The Dynamic Great Lakes Economy, Employment Trends from 2009 to 2018* <<https://www.michiganseagrant.org/wp-content/uploads/2020/10/MICHU-20-715-Great-Lakes-Jobs-Report-fact-sheet.pdf>> (October 2020).

¹⁴ Dave Bartkowiak, Jr., Click On Detroit, *Michigan’s Beer Industry Chugs Along: \$9.9 Billion to State’s Economy* <<https://www.clickondetroit.com/features/2021/07/09/michigans-beer-industry-chugs-along-99-billion-to-states-economy/#/>> (July 9, 2021).

¹⁵ *Independent Risk Analysis for the Straits Pipeline, Final, supra* at 312.

¹⁶ Robert B. Richardson & Nathan Brugnone, *Oil Spill Economics: Estimates of the Economic Damages of an Oil Spill in the Straits of Mackinac in Michigan*, at pg. 2 <https://d3n8a8pro7vhmx.cloudfront.net/oilandwaterdontmix/pages/3151/attachments/original/1526303913/FLOW_Report_Line-5_Final-release.pdf?1526303913> (May 2018).

there are cost effective and readily available alternatives to the transportation of fuel by Line 5. We are confident that the proper application of the public trust doctrine under the Great Lakes Submerged Lands Act by EGLE, the agency charged with implementing it, will result in the same conclusion.

ARGUMENT

This Court has long recognized the State's common law duty to protect the Great Lakes and their bottomlands for the people of Michigan. The State took title to the Great Lakes bottomlands "in trust for the people," *State v Venice*, 160 Mich 680, 702 (1910), and serves "as the trustee of public rights in the Great Lakes," *Glass v Goeckel*, 473 Mich. 677, 679 (2005). "[U]nder longstanding principles of Michigan's common law, the State, as sovereign, has an obligation to protect and preserve the waters of the Great Lakes and the lands beneath them for the public." *Id.* at 678. This obligation applies to all branches of Michigan government—legislative, judicial, and most importantly for this case, executive. *Obrecht v National Gypsum*, 361 Mich 399, 412 (1960).

The obligations of executive agencies to protect the public trust have been further specified in statute. In this case, two statutes clarify agency roles and requirements. The Michigan Environmental Protection Act (MEPA) requires public trust determinations for all natural resources of the State, and the Great Lakes Submerged Lands Act requires additional protections for Great Lakes bottomlands. MEPA provides that in every agency proceeding, "the alleged pollution impairment, or destruction of the air, water or other natural resources, *or the public trust in these resources*, shall be determined..." MCL 324.1705(2)(emphasis added). The Submerged Lands Act allows for the private use of Great Lakes bottomlands only if "the public trust in the state will not be impaired," MCL 324.32502, and mandates that any determination of no impairment be made by the Act's implementing agency, EGLE.

The MPSC, and then the Court of Appeals, ran roughshod over both the common law and statutory requirements to protect the public trust in the Great Lakes. The MPSC’s decision made no determinations or findings regarding the public trust. Indeed, in its MEPA review, the agency only considered the impairment to the “air, water or other natural resources,” and failed to analyze impairment to “the public trust in those resources.” See *In re Application of Enbridge Energy*, order of the Public Service Commission entered December 1, 2023 (Case No. U-20763) at 291-352, FLOW Appendix (“App.”) 1 at 291-352. The Court of Appeals went even farther, holding that the public trust doctrine did not apply to agencies that are “creatures of the legislature,” *In re Application of Enbridge Energy to Replace and Relocate Line 5*, unpublished opinion of the Court of Appeals, issued February 19, 2025 (Docket No. 369163), p. 22, FLOW App. 2 at 374, which is virtually every agency. Then, without explanation or reasoning, the court concluded in one sentence that the MPSC had somehow complied with MEPA’s public trust mandate after the agency had expressly declined to do so. *Id.* at 378. And neither the MPSC nor the Court of Appeals even considered the public trust determinations that must be made under the Great Lakes Submerged Lands Act or that EGLE is the agency that is statutorily required to make those determinations.

The legal errors discussed above respond to this Court’s first two questions and are explored in detail by FLOW in its brief. The Business Network will not repeat that analysis here.¹⁷ Our focus is on the Court’s third question, what the proper scope of a public trust analysis should be in MPSC proceedings.

¹⁷ The MPSC and the Court of Appeals also made numerous other errors relating to its MEPA process and analysis that are thoroughly discussed in the party brief of the Tribal Nations, Environmental Law and Policy Center, and Michigan Climate Action Network in the companion case before the Court; we do not address those here.

I. The MPSC cannot approve Enbridge's private use of Great Lakes bottomlands without a public trust determination by EGLE, the agency designated in the Great Lakes Submerged Lands Act

FLOW makes an irrefutable argument in its party brief that the scope of the public trust doctrine for Great Lakes bottomlands is set forth in the Great Lakes Submerged Lands Act, and that by statute, only EGLE can make the required determinations for private use of the bottomlands. FLOW's argument is only strengthened by the MPSC's errors in the instant case.

In its order, the MPSC failed to apply any standards specific to the Great Lakes or the public trust doctrine. The MPSC has no agency rules for applying MEPA or the Great Lakes Submerged Lands Act. In its opinion, it made factual findings relating to pollution, impairment or destruction without determining what those terms mean or how broadly they should be measured under MEPA. The MPSC simply quoted the statute's terms and then went directly into a factual inquiry. *In re Application of Enbridge Energy*, order of the Public Service Commission, FLOW App. 1 at 290-291, 326. It never even considered their special application to Great Lakes public trust resources.

Contrast the MPSC's indeterminate approach with the standards EGLE must apply when considering a private use under the Great Lakes Submerged Lands Act. Under EGLE's rules for implementing the Act:

In each application for a permit, lease, deed, or agreement for bottomland, existing and potential adverse environmental effects shall be determined. Approval shall not be granted unless the department has determined both of the following:

- (a) That the adverse effects to the environment, public trust, and riparian interests of adjacent owners are minimal and will be mitigated to the extent possible.
- (b) That there is no feasible and prudent alternative to the applicant's proposed activity which is consistent with the reasonable requirements of the public health, safety, and welfare.

Mich. Admin Code, R 322.1015.

Under these standards, EGLE defines the impairment of Great Lakes public trust resources more specifically and protectively than MEPA, prohibiting any project that has more than a “minimal” adverse effect. That minimal adverse effect determination alone requires the denial of a permit, *even if there is no feasible and prudent alternative to the project*. Compare that mandate with MPSC’s interpretation of MEPA, which says that if there is no feasible and prudent alternative, environmentally harmful projects may still be approved. *In re Application of Enbridge Energy*, order of the Public Service Commission, FLOW App. 1 at 291. In another expansion of protections beyond MEPA, subsection (b) of EGLE’s Great Lakes Submerged Lands Act rules prohibits private Great Lakes bottomlands projects that have a feasible and prudent alternative *regardless* of the environmental or public trust impairments. MEPA only requires a feasible and prudent determination if there is pollution, impairment or destruction of natural resources or the public trust; without such impairment, projects can proceed even if they have a feasible and prudent alternative.

The legislature has provided Great Lakes bottomlands with enhanced public trust protection under the Great Lakes Submerged Lands Act, and it has designated EGLE (not the MPSC or other agencies) as the agency to enforce those protections. Based on the MPSC’s track record in the instant case, that is a wise decision. Under the law, the MPSC must fulfill its public trust duties by revoking its permit for Enbridge’s private use of Great Lakes bottomlands and allowing EGLE to make a public trust determination on the tunnel project.

II. The application of public trust standards under the Great Lakes Submerged Lands Act will likely result in EGLE finding environmental harm that is potentially catastrophic, far exceeding the “minimal” adverse effect standard

The application of the proper standards by the proper agency is likely to mean wholesale changes to the conclusions reached by the MPSC and upheld by the Court of Appeals. EGLE must

determine the harm to the public trust and the bottomlands under the “minimal” adverse effect standard, which is far more rigorous than the standard the MPSC used in its assessment of generalized environmental harm under MEPA (and which did not include any consideration of the harm to the public trust).

EGLE currently is considering evidence of harm from the tunnel in related permit proceedings, and that evidence is more than sufficient to establish minimal adverse effects to the Great Lakes bottomlands. That evidence includes three studies by McMillen Jacobs Associates, experts commissioned by the Michigan Department of Transportation, that collectively establish the substantial risks of harm from the tunnel.¹⁸ According to those studies:

- The design for the tunnel assumes that it will run through solid, stable bedrock beneath the Straits. But Enbridge gathered astonishingly little information about the actual state of the soil and rock along most of the tunnel’s path.¹⁹ In 2021, McMillen Jacobs reviewed Enbridge’s studies to find that Enbridge gathered only one test bore sample along the

¹⁸ McMillen Jacobs Associates, Technical Memorandum, *DRAFT Geotechnical Exploration Level of Effort for the Line 5 Replacement Tunnel* (“MJA Geotechnical Exploration”) <<https://www.michigan.gov/-/media/Project/Websites/egle/Documents/Multi-Division/Line-5/MDOT/2021-01-13-Memo-Geotechnical-Exploration-DRAFT.pdf?rev=8b564bb3c4614aaeaea4696b55c1a5ea>> (January 13, 2021); McMillen Jacobs Associates, Technical Memorandum, *Collapse Potential for the Line 5 Replacement Tunnel* (“MJA Collapse Potential”), <<https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Multi-Division/Line-5/MDOT/2021-01-13-Memo-Collapse-Potential.pdf>> (January 13, 2021); McMillen Jacobs Associates, Technical Memorandum, *FINAL Risk Mitigation for the Line 5 Replacement Tunnel* (“MJA Risk Mitigation”) <<https://www.michigan.gov/-/media/Project/Websites/egle/Documents/Multi-Division/Line-5/MDOT/2021-01-13-Memo-Risk-Mitigation.pdf?rev=532560ac752049b9a9817f42ca4a65b0>> (January 13, 2021).

¹⁹ See *MJA Geotechnical Exploration* at 2-3.

roughly 11,000 feet of the deepest, most critical section of the proposed tunnel route²⁰—meaning that Enbridge’s tunnel boring will be an untested experiment with the Great Lakes.

- What little data the Enbridge studies did produce is alarming. According to McMillen Jacobs, the few core samples taken near and along the route of the tunnel reveal “poor” or “very poor” rock quality, with porous, highly fractured, and brecciated rock (rock composed of broken fragments joined together by fine particles).²¹ Those core samples further show at least 10 voids in the soil and rock strata near the path of the tunnel.²² In other words, the bedrock along the proposed tunnel’s path is far from solid, and any oil leak in the tunnel could easily seep through the permeable rock into the water of the Great Lakes above.²³
- Poor rock quality also means that the tunnel, already expected to take several years to build, would be enormously challenging to construct, if it can be built at all. Because of the high pressures at the extreme depth of the tunnel (up to 17 atmospheres) and the ease with which water will make its way through the porous and fractured rock, McMillen Jacobs has concluded that the planned tunnel would experience high groundwater inflows, with water inundating the borehole while it is being drilled.²⁴ The voids encountered during boring will have to be filled with high-pressure cement, and McMillen Jacobs has expressed

²⁰ *Id.* at 9.

²¹ *Id.* at 7-8.

²² See *id.* at 9-10; also see *MJA Collapse Potential* at 3-4.

²³ *MJA Collapse Potential* at 3 (discussing the permeability of the rock if the voids are not accounted for).

²⁴ *MJA Risk Mitigation* at 3-7.

significant concern that the grout needed to seal those voids would blow out, uncontrolled, through the rock during that process.²⁵

These studies, in addition to other voluminous material in the record before EGLE, demonstrate a high risk of devastating failures from tunnel construction and operation failures that would be ruinous for Business Network members, Michigan's people and economy, and the Great Lakes themselves. These studies are more than enough to establish the likelihood of minimal adverse harm to the Great Lakes bottomlands from Enbridge's proposed tunnel.

III. Under the Great Lakes Submerged Lands Act's public trust standards, there are feasible and prudent alternatives to the proposed tunnel

As established above, the Great Lakes Submerged Lands Act requires EGLE to determine whether there are feasible and prudent alternatives to the tunnel project under the counterfactual assumption that the project has minimal environmental adverse effects. Even in a case where such effects are minimal, if there are one or more alternatives, then the project cannot be approved. Mich. Admin Code, R 322.1015(b).

As shown in the previous section, the impacts of the tunnel on Great Lakes are potentially catastrophic and far exceed the minimal adverse effect standard, making the feasible and prudent alternatives analysis unnecessary under the Great Lakes Submerged Lands Act. But if EGLE does undertake that analysis, ample evidence exists to show that the most feasible and prudent alternative to the tunnel is to stop using Line 5 entirely. After careful assessment of their own energy requirements and the region's energy supplies, the Business Network is confident that Line 5 does not need to be used at all to provide fuel for energy, jobs or economic growth—and so the

²⁵ *Id.* at 6.

tunnel itself is not needed. Market forces will replace Line 5's fuels with fuel from other sources, at comparable prices, without Line 5, so the tunnel is not needed to keep Line 5 in operation.

This conclusion is thoroughly substantiated by an extensive 2023 report from PLG Consulting, the industry thought leader in pipeline logistics.²⁶ Line 5 transports oil and natural gas liquids ("NGLs") refined to become propane and butane, with the vast majority of the fuels transported being oil. The PLG report found that within 18 months of a Line 5 shutdown, the market would supply the refineries that presently receive Line 5 oil with comparable quantities at comparable prices by transporting oil through a variety of different means: another existing pipeline, waterborne tankers (not through the Great Lakes), and existing rail facilities.²⁷ There would be no job loss, energy shortages or economic hardship.

The PLG study's analysis and conclusions on oil supply and price were confirmed by Enbridge's long-term oil market economist and lead expert who agreed that energy supply would be replaced if Line 5 shut down. Specifically, in a case involving Line 5's trespass on tribal reservation lands without a valid easement heard in the federal district court in Wisconsin in 2023, Enbridge's economic expert acknowledged that existing infrastructure would be able to compensate for any lost oil. *See* expert report and testimony of Neil K. Earnest in *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v Enbridge Energy Co.*, 626 FSupp3d 1030 (WD Wis. 2022) (No. 19-CV-602-WMC).²⁸ And fuel prices would feel

²⁶ See PLG Consulting, *Likely Market Responses to a Shutdown of Line 5* <<https://plgconsulting.com/white-paper-likely-market-responses-to-a-line-5-shutdown/>> (October 2023) ("PLG Report"). PLG was an expert for the Bad River Band in the *Bad River Band* case referenced *infra*.

²⁷ See *id.* at 9.

²⁸ *Bad River Band*, Earnest Expert Report ("Earnest Report") at 11-12, ECF No. 262.; *Bad River Band*, Tr. of Earnest Testimony ("Earnest Testimony") at 91:18–92:10, 99:11–20, and 130:6–11,

virtually no effect as refined product pipelines would rapidly replace product into Michigan and the upper Midwest. Enbridge's Mr. Earnest in the same 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."²⁹

As to propane, PLG determined that existing rail and storage facilities would supply consumers directly with the propane that Line 5's NGLs produce now at the same quantity and at comparable prices.³⁰ Rail transportation of propane is already the most common form of propane transport in North America and the leading mode of importation from Canada. "[V]irtually all of the major propane fractionator [refining] facilities and underground storage caverns for propane in North America are rail-served."³¹ The PLG study documented that market adjustments are already occurring, as propane supply companies are finding new sources of propane that do not rely on Line 5.³² For example, the Ambassador propane pipeline in Michigan has been upgraded, enabling it to carry propane in both directions to respond quickly to changes in market supply and demand.³³

PLG's conclusions match a report from Governor Whitmer's Propane Task Force. The Task Force report 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

ECF No. 610; *Bad River Band*, Defs.' Obs. and Resps. to Pls.' Fourth Set of Interrogs. at 4, 5, ECF No. 399-4 (describing actions needed to expand each segment of Line 78).

²⁹ *Bad River Band*, Earnest Report at 12.

³⁰ See PLG Report at 82-103.

³¹ *Id.* at 28.

³² *See id.* at 41.

³³ *Id.* at 84.

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.³⁴

Enbridge's expert in the *Bad River Band* case acknowledged that in the past such shifts from pipeline to rail have had little to no impact on prices. The Cochin Pipeline in Wisconsin, with a capacity of 76,000 bpd of propane (approximately the same amount of NGLs carried by Line 5), in 2012 reversed direction and stopped supplying propane to Wisconsin and other states. In the *Bad River Band* case, Enbridge's lead expert Mr. Earnest acknowledged that by the time the reversal took place in 2014, several new rail facilities had been built and Wisconsin and the Midwest were fully supplied with propane.³⁵ And there was no discernible impact on the price.³⁶

While PLG and Enbridge's experts focused primarily on meeting Michigan's and the greater Great Lakes region's energy needs from alternative means of transporting fossil fuels, new developments in clean energy create additional options for energy supply. Michigan's upcoming renewable energy portfolio requirements as well as advancements in technology are prime examples. By 2030, all Michigan electric providers are required to have a 50% renewable energy

³⁴ *Analysis of Propane Supply Alternatives for Michigan*, PUBLIC SECTOR CONSULTANTS 74 (2020) <<https://www.michigan.gov/-/MEDIA/PROJECT/WEBSITES/EGLE/DOCUMENTS/GROUPS/UPETF/REPORT-UPETF-PART-1.PDF?REV=FCF2B8DFC8E64838B1195FD193405566>>

³⁵ Earnest Report 38–39.

³⁶ See Earnest Testimony 115:20–23; see also U.S. Energy Info. Admin., *Weekly Wisconsin Propane Residential Price* (2023) <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=W_EPLLPA_PRS_SWI_DPG&f=W>; RBN Energy LLC, *No Cochin, No Cry – Part 2 – New Infrastructure To Deliver Midwest Propane Supplies* (2014), <<https://rbnenergy.com/no-cochin-no-cry-part-2-new-infrastructure-to-deliver-midwest-propane-supplies>> (describing \$24 million investment in 5 small rail terminals for unloading propane, which allowed for full transition away from the Cochin Pipeline without impacting consumers).

portfolio, which must be boosted to 60% by 2035.³⁷ Meeting that mandate will reduce consumer demand for propane and home heating oil. Respecting the public protections for the bottomlands of the Great Lakes will enable the State to grow its renewable energy market as the Legislature intended.

CONCLUSION

Michigan businesses, Michigan's residents, and the Great Lakes themselves depend on the protections established by the public trust doctrine. The State in all its branches has a solemn and perpetual duty to protect the public trust in the Great Lakes. Michigan discharges that duty through the common law and via statute—generally through MEPA and in addition, for the Great Lakes, through the Great Lakes Submerged Lands Act.

In the instant case, the State's solemn duty has been violated. The Michigan Public Service Commission refused to consider the public trust in approving Enbridge's tunnel proposal and the Court of Appeals upheld and compounded that error. The result is that the wrong agency applied the wrong legal standard in determining the impact of the proposed tunnel to the public trust in the Great Lakes. Under the Great Lakes Submerged Lands Act, EGLE and not the MPSC must make the public trust determination. And under that Act, EGLE cannot approve any project that has more than minimal adverse effects on the public trust- even if there is no feasible and prudent alternative—a standard that the MPSC and the Court of Appeals ignored.

The consequences of these errors are significant. Authoritative expert opinion establishes the disastrous risks the proposed tunnel poses to the Great Lakes. Those risks alone are enough to

³⁷ Michigan Public Service Commission, *MPSC report finds continued growth in renewable energy and distributed generation, with significantly more to come* <<https://www.michigan.gov/mpsc/commission/news-releases/2025/10/08/mpsc-renewable-energy-distributed-generation-legacy-net-metering-report>> (October 8, 2025).

demonstrate more than minimal adverse effects and doom the project. In addition, evidence from multiple industry experts, including Enbridge's own expert, have concluded that there are cost-effective alternatives to Line 5 itself, which means the tunnel is not needed. The expert conclusion that there is a feasible and prudent alternative to the project by itself requires a denial of the application under both MEPA and the Great Lakes Submerged Lands Act.

The very survival of members of the Business Network and countless other businesses in Michigan depends on the health of the Great Lakes. The catastrophic risks the proposed tunnel poses for the lakes would have devastating impacts on our businesses. The refusal of the MPSC and the Court of Appeals to meet the State's public trust obligations, if allowed to stand, would make those risks into reality. Many of our businesses and the Great Lakes themselves would never recover. We respectfully request that the Court remand this matter to the MPSC and order the agency to deny Enbridge's tunnel application unless and until EGLE makes the determinations required under the public trust doctrine.

Respectfully submitted,

Dated: January 23, 2026

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WORD COUNT VERIFICATION

Pursuant to MCR 7.212(B) and relying upon the word count of the word-processing system used to prepare the foregoing brief, I certify that this brief contains 5,490 words.

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PROOF OF SERVICE

I hereby certify that on January 23, 2026, I electronically filed the foregoing document with the Clerk of the Court via the MiFILE TrueFiling system, which will serve copies of upon service contacts of record.

I declare that the above statements are true to the best of my knowledge, information and belief.

/s/ R. Abigail Adams
R. Abigail Adams, Paralegal

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