UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STATE OF MICHIGAN, et al.,

Plaintiffs,

v.

ENBRIDGE ENERGY LIMITED PARTNERSHIP, et al.,

Defendants.

Case No. 1:20-cv-1142

HON. JANET T. NEFF

OHIO ATTORNEY GENERAL DAVE YOST'S *AMICUS CURIAE* BRIEF ON BEHALF OF THE STATE OF OHIO AND STATE OF LOUISIANA REGARDING ECONOMIC HARM RESULTING FROM A LINE 5 SHUTDOWN

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I. INTRODUCTION AND STATEMENT OF *AMICUS CURIAE* INTEREST

The State of Ohio has a significant interest in the continued operation of Enbridge's Line 5 pipeline and will experience far-reaching consequences if it is shut down. As the chief law enforcement officer for the State of Ohio, the Ohio Attorney General, joined by the Louisiana Attorney General, recognizes that environmental protection and economic impact are not mutually exclusive. Ohio and Louisiana understand that Michigan regulators must protect the environment and public safety by maintaining the integrity of the Line 5 pipeline. And, just like Michigan, Ohio has a duty to protect the public trust in the Great Lakes. Ohio Enabling Act of April 30th, 1802, 2 Stat. 175, sec. 1.

However, Ohio and Louisiana also owe a duty to their citizens whose livelihoods depend on commerce that crosses state lines. Ohio refineries, their employees, and key industrial stakeholders directly rely on Line 5's crude oil supply, and its economic effects are strongly felt in the Buckeye State and beyond. Ohio, joined by Louisiana, respectfully urges the Court to carefully balance protections for both the environment and the economic health of individuals and businesses on both sides of the border by allowing Line 5 to continue to operate safely.

II. LINE 5 HAS A SIGNIFICANT ECONOMIC IMPACT ON TOLEDO AND ON OHIO REFINERIES.

A. Disrupting operation of Line 5 will have a serious economic impact.

Shutting down Line 5 will have enormous economic consequences—several billion dollars in losses—for Toledo, Ohio and beyond. And the industrial impact would be on a similar scale. A cessation of Line 5 will reduce the gas, diesel, and jet fuel supply in Michigan, Ohio, Pennsylvania, Ontario, and Quebec by 14.7 million gallons per day. *See* Exhibit A ("The impact of a Line 5 shutdown") at 2 as attached. Ohio refineries, unlike refineries in the major port cites of the East, West, and Gulf coasts, do not have the luxury of having readily accessible alternative sources of crude oil should a supply line be curtailed, cut-off, or shutdown. Instead, Ohio refineries rely on dedicated crude-oil sources that, in turn, depend on contract and franchise rights. Line 5 (via Line 17, which is known as the "Toledo Pipeline") is therefore a lifeline for Ohio's refineries. *See* Exhibit B ("Enbridge's Pipelines in Michigan: Fueling Michigan's Economic Engine") as attached.

Ohio's refineries fulfill crucial needs in Ohio, Michigan, Indiana, Illinois, and elsewhere in the Midwest by providing jet fuel to airports and petroleum-based feedstock to industry. In the process, they directly and indirectly employ thousands of highly skilled trades workers and unskilled workers. Those Ohio refinery jobs, in turn, rely on material, labor, and service support from many thousands of other Ohioans working for suppliers and downstream businesses. The collective annual economic activity generated by these Ohio refineries is in the billions of dollars. *See* Exhibit A at 2.

Shutting down Line 5 will have severe economic impacts. It will result in a devastating financial impact on Ohio, Michigan, and the other States that rely on Ohio's refineries—all of whom are already reeling from the unprecedented economic crisis caused by COVID-19. Further economic disruption is something that all concerned should hope to avoid.

B. There is no viable replacement for the crude oil supplied by Line 5.

The economic risk posed by a shutdown of Line 5 is exacerbated by the fact that there are few (if any) alternatives that can replace the crude oil currently supplied by Line 5. Alternative delivery systems are inefficient and inconsistent at best and, in some cases, simply do not exist. According to Enbridge's published estimates, "[t]here are no viable options for replacing the volume of light crude delivered by Line 5, with rail able to provide less than 10% of that volume." Exhibit A, at 2. Shutting down Line 5 would, at best, force the refineries to depend on inferior and highly inefficient modes of transportation. The refineries would need to rely on rail, port, and truck transport, as well as other lines with capacity restrictions, and other types of crude oil that are less compatible with refinery operations. And all of that presumes that any of those alternatives are even available.

Independent analysis corroborates the supply impact. In 2018, Michigan Technological University issued a comprehensive report on Line 5.[1] It analyzes a Line 5 shutdown at Appendix G12.[2] Michigan Tech's analysis includes both of the Toledo, Ohio refineries, as well as others in the Ohio-Michigan region, which the Risk Analysis refers to collectively as the "Michigan area refineries." *Id.* (*2018 INDEPENDENT RISK ANALYSIS for the Straits Pipelines*, Appendix G12) at A-123 (*A-GI2.4.1.3 Sources of Crude Oil for Detroit and Toledo Refineries*). That analysis confirms that there is no crude oil supply network for the Ohio and Michigan refineries that could make up for a complete Line 5 shutdown. *Id.* at A-131 (*A-GI2.5.1.1 Line 5 Petroleum Refinery Operations Following Supply Disruption*). Michigan Tech concludes its analysis by highlighting the significant supply disruption that a shutdown of Line 5 would cause:

> Thus, the Line 5 shutdown in the short term would not only limit light crude oil, but heavy crude as well to refineries in Illinois, Ohio, Michigan, and Canada. The unexpected loss of 450,000 barrels per day of crude oil will require large reductions of refining crude inputs at facilities that affect Michigan and surrounding regions – and a loss of product production that could even exceed that implied by the Line 5 crude volume loss alone.

Id.

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[1] *2018 INDEPENDENT RISK ANALYSIS for the Straits Pipelines,* which can be viewed here: https://mipetroleumpipelines.com/document/independent-risk-analysis-straits-pipelines-executive-summary# (last viewed March 16, 2021).

[2] 2018 *INDEPENDENT RISK ANALYSIS for the Straits Pipelines,* Appendix G12 (A-G12.4.1 Petroleum Supply and Infrastructure Excluding Propane), which can be viewed here: https://mipetroleumpipelines.org/sites/mipetroleumpipelines.org/files/document/pdf/Straits_Independent_Risk_Analysis_Final_Appendices.pdf (last viewed March 16, 2021).

Upon examining the Michigan Tech Report, a veteran of the Michigan Pipeline Safety Advisory Board went further and wrote to then Governor Snyder:

> In my experience and professional opinion, the price impacts of an immediate shutdown of Line 5 would produce much larger petroleum product and propane price impacts than shown in the alternatives or risk studies due to the relatively in-elastic nature of the demand for propane and other petroleum products in the short term.

See Exhibit C (Letter from Jeffrey Pillon, Member of Michigan Pipeline Safety Advisory Board to Michigan Governor Rick Snyder, dated August 27, 2018) at 2 as attached.

All signs point to a deep cause for concern if Line 5 is shutdown. The absence of any viable alternatives to Line 5 only magnifies the economic risks of such a decision for Ohio, Michigan, and elsewhere.

C. The PBF Energy Toledo, Ohio Refinery is at risk if Line 5 is shutdown.

The threats of economic harm caused by a shutdown of Line 5 are not abstract. The PBF Energy Toledo Refinery ("PBF Toledo Refinery") *directly* employs 585 people in an array of occupations including engineers (mechanical, chemical, and civil), accountants, hard craft, building trades, and operators. *See* Exhibit D (Toledo Refining Company Presentation: "Energy Drives Quality of Life") at 6 (unnumbered) as attached. It also *indirectly* employs an additional 600 contractors. *Id.* The total annual economic activity produced by this facility alone is $5.8 billion, resulting in $9.2 million in payroll taxes. *Id*. Toledo Refining's employees produce—per day—enough gasoline to fill 224,000 cars and enough jet fuel to fly around the world 42 times. *Id.* at 8 (unnumbered). The PBF Toledo Refinery is a large-scale supplier of jet fuel to Detroit Metro Airport, Pittsburgh International Airport, Indianapolis International Airport, and other airports in the region. *See* Exhibit E (Letter from Matthew Lucey, President of PBF Energy to the Honorable Judge Jamo, Circuit Court for the 30th Judicial District, Ingham County, Michigan, dated June 29, 2020) at 2 as attached. Like the neighboring BP-Husky Refinery in Toledo, the PBF Toledo Refinery's production is heavily dependent on the crude supply provided by Line 5. *See Id.* at 1-2.

On a daily basis, using crude oil that comes through Line 5, the PBF Toledo Refinery:

> produces finished products including gasoline and ULSD [ultra-low-sulfur diesel], in addition to a variety of high-value petrochemicals including benzene, toluene, xylene, nonene and tetramer. Toledo is connected, via pipelines, to an *extensive distribution network throughout Ohio, Illinois, Indiana, Kentucky, Michigan, Pennsylvania and West Virginia*. The finished products are transported on pipelines owned by Sunoco Logistics Partners L.P. and Buckeye Partners. In addition, [the refinery] ha[s] proprietary connections to a variety of smaller pipelines and spurs that help [it] optimize [the] clean products distribution. A significant portion of Toledo's gasoline and ULSD are distributed through the approximately 36 terminals in this network.

PBF Energy's 2018 Annual Report at 16 (emphasis added).[3]

Industrial production like this demonstrates that the PBF Toledo Refinery has a significant industrial reach and that it supports important economic activity. That activity is only made possible by the Refinery's major source of crude oil—Line 5 via the Toledo Line.

D. The BP-Husky Toledo, Ohio Refinery is also at risk if Line 5 is shutdown.

The BP-Husky Refinery in Toledo has an industrial scale and economic impact very similar to the PBF Toledo Refinery. It has a refining capacity of 155,000 barrels per day and produces 3.8 million gallons of gasoline, 756,000 gallons of jet fuel, and 1.1 million gallons of low sulfur diesel fuel.[4] It *directly* employs more than 600 on a 585-acre complex, and it *indirectly* supports an additional 4,400 jobs. *Id.* (*Hydrocarbon Technology*); *see also* Exhibit F ("BP's economic investment: Ohio") as attached. Those jobs depend on BP-Husky's crude-oil supply from the

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[3] The entire publication can be found here: https://investors.pbfenergy.com/~/media/Files/P/PBF-Energy-IR-V3/documents/annual-reports-and-proxy/pbf-energy-2018-annual-report.pdf (last accessed March 16, 2021).

[4] *See Hydrocarbon Technology* at https://www.hydrocarbons-technology.com/projects/bp-husky/ (last accessed March 16, 2021).

Toledo Line. *See* Exhibit G ("Enbridge's economic impact on Ohio") at 2 as attached. The BP-Husky Refinery also produces asphalt, kerosene, propane, propylene, sulfur, and other products, all of which would likely be severely curtailed by a Line 5 shutdown.[5]

Like the PBF Toledo Refinery, production at the BP-Husky Refinery, and the employees who make that production possible, have a significant economic impact on Ohio and the surrounding region. In 2017, the refinery yielded $2.8 million to the State of Ohio in property and state/local income/franchise taxes. Exhibit F. In 2016 and 2017, the company invested over $900 million in its facility for safety, energy efficiency, and maintenance improvements. *Id*. It is therefore not just BP-Husky Refinery that will suffer economic hardship if Line 5 is shutdown—Ohio and Ohioans and other citizens and their state governments will as well.

E. There is intense public concern over the economic loss that would be caused by a shutdown of Line 5.

In a 2019 letter to Governor Whitmer and Attorney General Nessel, the North America's Building Trade Unions emphasized the impact that Ohio's Toledo Refineries have on the regional economy—and that Line 5 makes that impact possible. *See* Exhibit H (Letter from Sean McGarvey, President of North America's Building Trade Unions to Michigan Governor Whitmer and Michigan Attorney General Nessel, dated June 14, 2019) as attached. They wrote that, "continued operation of [Line 5] is crucial to protecting and creating union manufacturing and other jobs in the Great Lakes states. Regional refinery jobs represent millions of manhours for the building and construction workers and tens of millions of dollars in income to the regional economy." *Id.* Illustrating the extent of that impact, the Building Trades Unions wrote that:

> The local gasoline and diesel market in both Michigan and the greater Northwest Ohio region would face the potential for significant refined product supply

[5] *See Hydrocarbon Technology*, https://www.hydrocarbons-technology.com/projects/bp-husky/ (last accessed March 16, 2021).

> shortages, coupled with material price spikes that would likely be passed on to the consumer. As an example, one refinery in Ohio alone that relies on crude oil from Line 5 makes 15 percent of the state's fuel supply. The refinery is also one of the more significant jet fuel suppliers for the Detroit Metro Airport and provides Michigan consumers with reliable, affordable gasoline and diesel fuel.

Id.

The letter that Ohio Governor DeWine sent to Governor Whitmer in 2019 emphasized the same point—"losing Line 5 would put more than 1,000 good-paying union jobs at risk in Ohio and Michigan." *See* Exhibit I (Letter from Ohio Governor DeWine and Ohio Lieutenant Governor Husted to Michigan Governor Whitmer, dated June 17, 2019) as attached. The threat of layoffs, made even more dire in a deep recession spawned by COVID-19, would be visited on lots of hard-working people across multiple state lines.

The positions taken in each letter are consistent with the widely-available evidence that shows that Line 5's economic impact extends far beyond Ohio and Michigan. The common thread is that, if Line 5 halts production, significant economic adversity will be thrust upon the entire region. That adversity will be extensively felt across a broad spectrum. It will be borne by thousands of union workers, businesses, and consumers alike.

III. CONCLUSION

The State of Ohio urges the Court to keep in mind the significant economic impact that a Line 5 shutdown will have on the residents, businesses, employees, and consumers in Ohio, Michigan, and the surrounding region.

To be clear, Ohio and Louisiana do not ask this Court to allow Line 5 to operate if it poses an imminent threat to the environment. It is the hope of these States, however, that reasonable assurances can be made to provide the necessary environmental protection while avoiding the disastrous economic impact that a wholesale Line 5 shutdown would cause.

Respectfully submitted,

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Dated: June 1, 2021

CERTIFICATE OF COMPLIANCE

Under LCivR 7.3(b)(ii), the undersigned certifies that the Ohio Attorney General Dave Yost's Amicus Curiae Brief on behalf of the State of Ohio regarding Economic Harm Resulting from a Line 5 Shutdown has 3,134 words. The undersigned used Microsoft® Word 2007® as the word-processing software to generate the word count.

/s/ Matthew D. Harper
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CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2021, the foregoing document was served upon all Counsel of record via the ECF filing system.

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