

MINUTES OF THE SPECIAL COMMISSION MEETING OF THE MICHIGAN PUBLIC SERVICE COMMISSION HELD VIA MICROSOFT TEAMS VIDEO CONFERENCING ON APRIL 22, 2020

Commission Chairman Sally A. Talberg called the meeting to order at 2:30 p.m.  
Executive Secretary Lisa Felice called the roll and declared there was a quorum.

**PRESENT**

Commission: Sally A. Talberg, Chairman  
Daniel C. Scripps, Commissioner  
Tremaine L. Phillips, Commissioner

Staff: Blair Renfro  
Lisa Felice

Additional Staff & Public Attending Telephonically/Video Conferencing: 254 Participants

Chairman Talberg outlined the process of conducting a Commission Meeting via Microsoft Teams Video Conferencing.

- I. Commissioner Scripps moved to approve today's amended agenda, Commissioner Phillips seconded.

Vote: Yeas – Talberg, Scripps, Phillips  
Nays – None

The amended agenda was approved.

**II. ORDERS**

**A. GAS**

1. U-20763 APPLICATION FOR THE AUTHORITY TO REPLACE AND RELOCATE THE SEGMENT OF LINE 5 CROSSING THE STRAITS OF MACKINAC INTO A TUNNEL BENEATH THE STRAITS OF MACKINAC, IF APPROVAL IS REQUIRED PURSUANT TO 1929 PA 16; MCL 483.1 *ET SEQ.* AND RULE 447 OF THE MICHIGAN PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND PROCEDURE, R 792.10447, OR THE GRANT OF OTHER

## APPROPRIATE RELIEF

(interim order to request comments on declaratory ruling request)

Case No. U-20763 involves an application by Enbridge Energy, Limited Partnership, pursuant to Act 16 of 1929, requesting that the Commission grant Enbridge the authority for its project described by the company as the Straits Line 5 Replacement Segment. In the alternative, Enbridge seeks a declaratory ruling that it already has the requisite authority from the Commission to construct the project that is the subject of the application. The order before you establishes a public comment period regarding the request for a declaratory ruling and places the Act 16 application in abeyance pending a decision on the request for a declaratory ruling. Commissioner Scripps moved that the Commission approve the order at its April 22, 2020 meeting. Commissioner Phillips seconded that motion.

Chairman Talberg commented:

“Before we proceed with a vote, I want to provide context for this order. Enbridge has been planning a project to replace the segment of Line 5 that crosses the Straits of Mackinac. This has received a lot of public attention. As Mr. Renfro noted, Enbridge filed with the MPSC under Public Act 16 of 1929, which grants siting authority to the Commission for oil and petroleum pipelines. The Commission originally approved Line 5 in 1953. In an application filed with the Commission last Friday, April 17, Enbridge seeks siting a new Act 16 approval to replace the pipeline and relocate it in a tunnel under the Straits. In the alternative, Enbridge requests a declaratory ruling from the Commission that the Act 16 approval is not required in order to construct the pipeline replacement. Enbridge’s request for declaratory ruling is a threshold legal issue of significant public interest and therefore we are seeking comments on this question of the applicability of Act 16. Anyone can file comments, but we are specifically seeking legal analysis on the question at hand. Instructions for submitting comments are included in our press release and order.

To avoid parties spending time and resources litigating the Act 16 contested case before the Commission while this issue is outstanding, the Commission is also holding the Act 16 application in abeyance. If we grant the request for declaratory ruling, no further proceedings will occur. Conversely, if we deny the request for declaratory ruling, the Commission will initiate the contested case process by requiring Enbridge to publish formal public notice and setting a prehearing conference with a deadline for interested parties to file requests to intervene.

Finally, I want to spread the word that the MPSC has launched a dedicated website, [Michigan.gov/mpscLine5](https://michigan.gov/mpscLine5) (link from home page) to enable the public to monitor Enbridge’s application. This includes the application, and will continue to be updated, e.g., with today’s order. There are a few other items to note for the public and other interested organizations:

- First, there is a two-page document explaining the MPSC’s siting authority under Act 16 and opportunities for the public to participate.
- Second, we have created a Line 5 e-mail list serv for anyone to sign up for email updates from the Commission. This will include meeting notices, press releases, orders, or other major developments specific to Line 5 issues before the MPSC. To sign up, go to the bottom of the Line 5 webpage and enter your e-mail address.

- Third, there is also the option to be notified of ALL filings and follow a case in E-Dockets. There are instructions on the website, but to summarize, go to the main E-Dockets page, enter case number 20763, and then click on the box that says: Notify Me of New Approved Filings. If you select this feature, you will receive emails when filings are made in the case. This is very different than updates and there could be many filings. Updates are what the Commission decides to send out, e.g., notice of public hearing, etc. to make it easier to monitor the case.

Between the e-dockets system and the new dedicated Line 5 page, the application and all non-confidential filings in the case, including any comments received, are accessible from our website. The MPSC was one of the first commissions in the country to go to electronic dockets over 20 years ago to increase transparency, and we are now on our second generation. You can also follow us on Twitter using the handle @MichiganPSC.”

Commissioner Scripps commented:

“To start, I want thank the Staff for their quick work in preparing this case and special meeting. The approach outlined today has a number of important advantages:

- First, by taking on the question of whether a permit under Act 16 is even needed for the proposed project, we can focus on this threshold legal question and by addressing it add greater certainty to the proceeding.
- Second, if we find that a permit is not needed, then we have spared all parties the cost of intervening and beginning a full contested case process when there is no need to do so.
- And finally, if we determine that a permit is indeed needed, by holding the substance of the case in abeyance until the threshold issues are resolved, we provide more time for potential parties and interested persons to review the application and consider whether and how best to participate.

And of course, if the case goes forward, there will be a number of ways for the public to participate, from formal intervention in the proceeding, to participating at public meetings, to submitting comments to the docket. More detail around such opportunities will be shared if we find that an Act 16 permit is needed for this project and a full contested case is required.

At the end of this, I’m confident we will have greater certainty around the underlying legal issues, and if a permit is needed, a more robust record on which to rely.”

Commissioner Phillips thanked staff for their efforts and Chairman Talberg for her leadership to create robust pathways for the community and stakeholders to participate in this proceeding and any forthcoming proceedings.

Vote: Yeas – Talberg, Scripps, Phillips  
Nays – None

The order was adopted.

### III. PUBLIC COMMENTS

Jeanne Sekely, Shannon Donnelly, Grand Haven, Kaye, Lisa Patrell, Elizabeth Benyi, Calumet, Anne Woiwode, Shawn Gompa, Mary Pelton-Cooper, Kathleen

Brosemer, Environmental Director, Sault Ste. Marie Tribe of Chippewa Indians, Alicia F., Sean McBrearty, Anonymous, Jeff Everly, William Toms, Andrew Nowicki, Aubrey Maccoux-LeDuc, Environmental Specialist with Bay Mills Indian Community, David Holtz, Bay Mills Indian Community, John Swimmer, Chief Legal Officer NHBP, John Machowicz Livingston County, Rita Mitchell, Jim Sherman, Ryan Stern, Beth Wallace, Alex Sagady, Bill Wood, WMEAC, Kate Madigan, Michigan Climate Action Network, Nancy Skinner - MDP Environmental Caucus, Ed Steinman, Ann Arbor, Terry Wilkinson, Mary Eifert, and Jesse, Mt. Holly conveyed their concerns about Enbridge Energy and its application in today's order.

State Senator Ed Mc Broom thanked the Commission for offering various ways and opportunities for citizens to submit comments. Senator Mc Broom also indicated the Commission plays a critical role to protect all citizens and provide them with access to safe and economical energy and should remain a primary focus of the agency.

State Representative Sara Cambensy thanked the Commission for allowing various ways for residents to participate in this case. Representative Cambensy also indicated that it is important to receive resident's feedback and the Commission has an important role for long term affordable energy.

Chairman Talberg announced that Robin Ancona, Director, Telecommunications Division, will be retiring April 30, 2020. The Chairman highlighted some of Ms. Ancona's accomplishments during her tenure at the Commission and thanked her for her contributions. Commissioner Scripps and Commissioner Phillips thanked Robin Ancona for her leadership during her tenure at the Commission.

Chairman Talberg commented that with the implications of COVID-19 that the State of Michigan announced layoffs of some State employees. The Chairman announced that staff have lost loved ones and colleagues. The Chairman acknowledged the hard work of staff during this time.

Commissioner Scripps indicated that the purpose of today's Special Commission meeting was to clarify the process of this case going forward.

A recording of the proceedings of the April 22, 2020 meeting is archived at: [https://www.michigan.gov/mpsc/0,9535,7-395-93307\\_93316\\_93317\\_93875---Y,00.html](https://www.michigan.gov/mpsc/0,9535,7-395-93307_93316_93317_93875---Y,00.html) .

Chairman Talberg announced that the next regularly scheduled Commission Meeting will be held on May 7, 2020 at 1:30 p.m.

Commissioner Scripps moved that the Commission adjourn, Commissioner Phillips seconded.

Vote: Yeas – Talberg, Scripps, Phillips  
Nays – None

The motion was approved.

The meeting adjourned at 3:44 p.m.

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Lisa Felice  
Executive Secretary