



Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington, DC 20515

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November 29, 2023

The Honorable Michael L. Connor  
Assistant Secretary of the Army for Civil Works  
United States Department of the Army  
108 Army Pentagon  
Washington, D.C. 20310

Dear Assistant Secretary Connor:

The continued unprecedented permitting delays for the Great Lakes Tunnel Project (GLTP) raise significant questions about an impartial review process and standards the United States Army Corps of Engineers (Corps) is using to issue permitting decisions. The GLTP is a crucial project which would allow for the safer transmission of vital energy supplies through the Straits of Mackinac, Michigan, along Enbridge Line 5 (Line 5). As the Chairman and Vice Chairman of the Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure, we are deeply concerned that the Corps' current timeline for completion of an environmental impact statement (EIS) is being unduly influenced by anti-development opposition and is at odds with permitting timelines mandated by the *Fiscal Responsibility Act of 2023 (FRA)*.<sup>1</sup>

Line 5 is a critical piece of America's energy infrastructure and supports the supply chain for the Great Lakes region and beyond. In total, Line 5 transports up to 540,000 barrels per day of light crude oil, light synthetic crude, and natural gas liquids, which are refined into propane.<sup>2</sup> These materials heat homes, fuel vehicles, and power manufacturing throughout the region.<sup>3</sup> For example, Line 5 supplies 55 percent of Michigan's propane needs and supplies approximately 45

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<sup>1</sup> See CORPS, *NEPA Timeline*, available at <https://www.line5tunneleis.com/nepa-timeline> [hereinafter *NEPA Timeline*]; see also Fiscal Responsibility Act of 2023, Pub. L. No. 188-5, 136 Stat. 10 [hereinafter *FRA*]; see also e.g. John Flesher, *Opposition team criticizes Enbridge plans for oil tunnel*, THE WASHINGTON POST, (Sept. 28, 2020), available at [https://www.washingtonpost.com/climate-environment/opposition-team-criticizes-enbridge-plans-for-oil-tunnel/2020/09/28/db248b7e-0199-11eb-b92e-029676f9e9bec\\_story.html](https://www.washingtonpost.com/climate-environment/opposition-team-criticizes-enbridge-plans-for-oil-tunnel/2020/09/28/db248b7e-0199-11eb-b92e-029676f9e9bec_story.html).

<sup>2</sup> See *About Line 5*, ENBRIDGE, available at <https://www.enbridge.com/projects-and-infrastructure/public-awareness/line-5-michigan/about-line-5> [Hereinafter *About Line 5*]; see also Fact Sheet, CORPS, *Enbridge Line 5 Tunnel Project Environmental Impact Statement*, available at [https://www.line5tunneleis.com/wp-content/uploads/2023/03/Line-5-Scoping-Handout-Fact-Sheet\\_20230324.pdf](https://www.line5tunneleis.com/wp-content/uploads/2023/03/Line-5-Scoping-Handout-Fact-Sheet_20230324.pdf).

<sup>3</sup> See *About Line 5*, *supra* note 2.

percent of the petroleum currently required by refineries in Michigan, Ohio, Pennsylvania, and in the Canadian provinces of Ontario and Quebec.<sup>4</sup>

Unfortunately, in recent years, Line 5 has been the undeserving target of radical anti-energy groups and state-level politicians who want to shut it down.<sup>5</sup> However, Line 5 is a prime example of efficiency. If it were shut down, it would take 2,000 trucks or 800 rail cars one-way, each day to transport the same volume of materials.<sup>6</sup> Moreover, it is estimated that Michigan residents may need to pay \$25,000 to convert their homes to electric heating and incur a \$3,500 annual increase in heating costs.<sup>7</sup> In addition, thousands of jobs at manufacturing facilities in the region could be in danger.<sup>8</sup>

In 2018, following years of work alongside the State of Michigan, Enbridge signed an agreement with the State to construct a tunnel under the lakebed in the Straits of Mackinac to contain a replacement section of Line 5.<sup>9</sup> Through the agreement, Enbridge proposed replacing the current dual pipelines sitting on the lakebed with a new 30-inch pipeline housed in a tunnel between 30 and 360 feet below the Straits.<sup>10</sup> The proposed design for the GLTP increases the safety of Line 5 by eliminating the possibility of an anchor strike damaging the pipeline, and it will provide for easier access for required inspection and maintenance work.<sup>11</sup>

In April 2020, Enbridge began the process of applying for the various required state and Federal permits for the GLTP.<sup>12</sup> Despite multiple failed legal attempts by Michigan Governor Gretchen Whitmer and Attorney General Dana Nessel, the GLTP received the necessary state environmental permits through the Michigan Department of Environment, Great Lakes, and

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<sup>4</sup> See *id.*; see also *Line 5 in Michigan: Consider the Alternative*, ENBRIDGE, available at <https://www.enbridge.com/projects-and-infrastructure/public-awareness/line-5-michigan/consider-the-alternative>.

<sup>5</sup> See e.g., Kelly House & Lester Graham, *Is the Line 5 tunnel a bridge to Michigan's energy future or a bad deal?*, BRIDGE MICHIGAN, (Apr. 1, 2021), available at <https://www.bridgemi.com/michigan-environment-watch/line-5-tunnel-bridge-michigans-energy-future-or-bad-deal> [hereinafter House & Graham].

<sup>6</sup> *Investing in Michigan's future*, ENBRIDGE, available at [https://www.enbridge.com/~/\\_media/Enb/Documents/Projects/line5/Investing%20in%20Michigans%20future%20FI%20NAL.pdf](https://www.enbridge.com/~/_media/Enb/Documents/Projects/line5/Investing%20in%20Michigans%20future%20FI%20NAL.pdf); see also *A Matter of Fact: Opponents of Line 5 ignore safety record and planned improvements for critical pipeline*, CANADIAN ENERGY CENTRE, (Aug. 4, 2021), available at <https://www.canadianenergycentre.ca/a-matter-of-fact-opponents-of-line-5-ignore-safety-record-and-planned-improvements-for-critical-pipeline> [hereinafter *A Matter of Fact*].

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> THIRD AGREEMENT BETWEEN STATE OF MICHIGAN, MICHIGAN DEP'T OF ENVIRONMENTAL QUALITY, AND MICHIGAN DEP'T OF NATURAL RESOURCES AND ENBRIDGE ENERGY, LIMITED PARTNERSHIP, ENBRIDGE ENERGY, INC., AND ENBRIDGE ENERGY PARTNERS, L.P. (Dec. 19, 2018), available at [https://www.michigan.gov/~\\_media/Project/Websites/MDOT/About-Us/Commissions/MSCA/Documents/Third-Agreement-Michigan-Enbridge.pdf?rev=c5005b8d359d4c4c871a4646d5223273](https://www.michigan.gov/~_media/Project/Websites/MDOT/About-Us/Commissions/MSCA/Documents/Third-Agreement-Michigan-Enbridge.pdf?rev=c5005b8d359d4c4c871a4646d5223273).

<sup>10</sup> *Id.*

<sup>11</sup> See *About Line 5*, *supra* note 2.

<sup>12</sup> Permit Application by Enbridge Energy, LP, to United States Army Corps of Engineers for Straits of Mackinac (Lake Michigan), Emmett and Mackinac Cos., MI, File No. LRE-2010-00463-56-A19 [hereinafter Army Corps Permit Application]; see also MICHIGAN DEP'T OF ENVIRONMENT, GREAT LAKES, AND ENERGY, *Timeline*, available at <https://www.michigan.gov/egle/about/featured/line5/timeline> [hereinafter State Permit Timeline].

Energy in early 2021.<sup>13</sup> In addition, a decision from the Michigan Public Service Commission for permitting the siting of the replacement tunnel is expected by the end of 2023.<sup>14</sup>

In addition to the state permits, in April 2020, Enbridge applied for a permit pursuant to Section 10 of the *Rivers and Harbors Act of 1899* and Section 404 of the *Clean Water Act (CWA)*.<sup>15</sup> The primary purpose of these statutes relates to proposed discharge of dredged or fill material into waters of the United States and the construction of structures or work that may affect navigable waters.<sup>16</sup> Unfortunately, significant regulatory delays from the Corps have followed the permit applications.

The Corps took 15 months after receiving the application to announce that it would undertake an EIS in compliance with the *National Environmental Policy Act (NEPA)*.<sup>17</sup> In addition, the Corps initiated the process to prepare an Ethnographic/Traditional Cultural Landscape Study under Section 106 of the *National Historic Preservation Act*.<sup>18</sup> On top of the 15 month lag in the decision to pursue an EIS, there was an additional 14 month delay between that decision and the Corps publishing the Notice of Intent to begin the EIS process.<sup>19</sup> Beset with delays from the very start, it took the Corps over two years from receiving the permit application to officially begin drafting the EIS.

Furthermore, in March 2023, the Corps announced that it would extend its decision timeline yet again, adding another year and a half to the delays, citing the number of comments it received.<sup>20</sup> This latest update to the timeline means that it will take at least three years total to complete the EIS and that a record of decision will not be issued until at least 2026.<sup>21</sup> Overall, the Corps appears to be planning to take six years to review and process the GLTP's application; despite that the project is only four and a half miles long, designed to pose less risk to navigable waters than the current pipeline housed on the lakebed in the Straits.<sup>22</sup>

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<sup>13</sup> See e.g., Sheri McWhirter, *Michigan Gov. Whitmer drops federal Line 5 lawsuit against Enbridge to support AG/s state suit instead*, MLIVE, (Nov. 20, 2021), available at <https://www.mlive.com/public-interest/2021/11/michigan-gov-whitmer-drops-federal-line-5-lawsuit-against-enbridge-to-support-ags-state-suit-instead.html>; see also James McCarten, *Judge sides with Enbridge in Michigan's latest bid to halt Line 5*, FINANCIAL POST, (Aug. 18, 2022), available at <https://financialpost.com/commodities/energy/oil-gas/judge-backs-enbridge-line5-michigan>; see also State Permit Timeline, *supra* note 12.

<sup>14</sup> *Id.*

<sup>15</sup> Army Corps Permit Application, *supra* note 12; *Rivers and Harbors Appropriation Act of 1899*, 33 U.S.C. § 403; *CWA*, Pub. L. No. 92-500, 86 Stat. 816 [Hereinafter *CWA*].

<sup>16</sup> See CORPS, *Project Information*, available at <https://www.line5tunneleis.com/project-information>.

<sup>17</sup> See Press Release, UNITED STATES DEP'T OF THE ARMY, *Acting Army assistant secretary announces USACE will conduct an EIS for Enbridge Line 5* (June 23, 2021), available at [https://www.army.mil/article/247787/acting\\_army\\_assistant\\_secretary\\_announces\\_usace\\_will\\_conduct\\_an\\_eis\\_for\\_enbridge\\_line\\_5](https://www.army.mil/article/247787/acting_army_assistant_secretary_announces_usace_will_conduct_an_eis_for_enbridge_line_5); *National Environmental Policy Act of 1969*, Pub. L. No. 91-190, 83 Stat. 852, 42 U.S.C. 4321.

<sup>18</sup> *Id.*; *National Historic Preservation Act*, Pub. L. No. 89-665, 80 Stat. 915.

<sup>19</sup> Notice of Intent to Prepare a Draft Environmental Impact Statement for the Line 5 Tunnel Projects, Mackinac and Emmet Counties, Michigan, 87 Fed. Reg. 50074 (Aug. 15, 2022).

<sup>20</sup> See Press Release, CORPS, DETROIT DISTRICT, *Corps of Engineers revises Enbridge Line 5 EIS schedule to ensure thorough analysis* (Mar. 23, 2023), available at <https://www.lre.usace.army.mil/Media/News-Releases/Article/3338591/corps-of-engineers-revises-enbridge-line-5-eis-schedule-to-ensure-thorough-anal/>.

<sup>21</sup> See *NEPA Timeline*, *supra* note 1.

<sup>22</sup> *Id.*

Line 5 has been operating for over 70 years without a spill into the Straits of Mackinac, and the GLTP will further reduce the risk of a spill.<sup>23</sup> Efforts to slow the progress of this important safety improvement defy logic. Should an accident occur, the environmental and economic consequences would sit squarely at the feet of the radical activists who continue to obstruct a project to improve the operational security of Line 5.<sup>24</sup>

We are concerned about the pattern of delays that have clearly developed before and during the first step in completing the GLTP. Important energy infrastructure projects such as the GLTP cannot afford to be bogged down in such regulatory mire. The authors of bedrock environmental laws such as *NEPA* and the *CWA* did not even consider timeline delays, let alone delays of six years, for important projects.<sup>25</sup> However, it did not take long to notice the unintended consequences of delays, and for action to be taken to address unnecessary delays.<sup>26</sup>

Congress has emphasized the importance of timely, yet thorough, environmental reviews for energy projects. For example, the *FRA* included provisions requiring prompt and unified environmental reviews.<sup>27</sup> One provision implemented a two-year timeline for completion of EISs.<sup>28</sup> Although the Corps began its EIS process before passage of the *FRA*, the message from Congress, and us today, is clear: delays of up to six years for completion of an EIS is unacceptable.

Pressure from various anti-development groups to halt or slow-walk the environmental review process, leading to regulatory delays, raises significant concerns about the Corps commitment to an impartial review process. It is no secret that the GLTP has been the subject of substantial outside pressure, including legal battles.<sup>29</sup> Governor Whitmer and Attorney General Nessel have sought to halt the GLTP and Line 5 through legal maneuvering and attempting to move lawsuits in state courts.<sup>30</sup> However, in multiple cases, a United States District Court judge has unequivocally noted Congress' authority to regulate interstate and international commerce, going so far in the Attorney General's case as to call state officials' lawsuits "gamesmanship" and "improper use of judicial machinery."<sup>31</sup> Regardless of these efforts, the operation of Line 5 and the GLTP permitting process will continue.<sup>32</sup>

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<sup>23</sup> See *About Line 5*, *supra* note 2; see also *A Matter of Fact*, *supra* note 6.

<sup>24</sup> See *A Matter of Fact*, *supra* note 6.

<sup>25</sup> See generally S. COMM. ON INTERIOR AND INSULAR AFFAIRS, NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 21, 91<sup>st</sup> Cong. (1969) (S. Rept. 91-296).

<sup>26</sup> 40 C.F.R. 1500 (1977); see also NINTH ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY 401 (1978) (stating actions taking by the Council on Environmental Quality to reduce delays in the *NEPA* process).

<sup>27</sup> *FRA*, *supra* note 1 at Title III.

<sup>28</sup> *FRA*, *supra* note 1 at § 321.

<sup>29</sup> See House & Graham, *supra* note 5.

<sup>30</sup> See Sheri McWhirter, *Judge blasts state efforts to keep Line 5 lawsuit out of federal court*, MLIVE, (Aug. 19, 2022), available at <https://www.mlive.com/public-interest/2022/08/judge-blasts-state-efforts-to-keep-line-5-lawsuit-out-of-federal-court.html>.

<sup>31</sup> *Id.*

<sup>32</sup> See e.g., Kelly House, *Why line 5 will likely remain open despite Democratic control of Lansing*, BRIDGE MICHIGAN, (Nov. 22, 2022), available at <https://www.bridgemi.com/michigan-environment-watch/why-line-5-will-likely-remain-open-despite-democratic-control-lansing>.

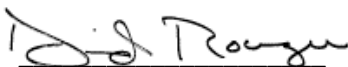
However, the project has already received the necessary environmental permits from the state, even despite the continued legal gamesmanship.<sup>33</sup> Compounding these concerns, the 1977 Pipeline Treaty between the United States and Canada ensures the uninterrupted flow of hydrocarbons between the two countries and has been invoked in the case of Line 5.<sup>34</sup> Not allowing proper maintenance of Line 5 due to unnecessary project delays creates a risk of breaching the transmission of energy supplies to Canada.<sup>35</sup> In such a scenario, the United States could find itself in abrogation of its treaty obligations.<sup>36</sup>

We recognize the importance of thorough environmental review and the rights of citizens to weigh in on important projects such as Line 5. However, we urge the Corps to comply with important *NEPA* timelines for the GLTP, especially given Line 5's important role in providing needed energy for the Great Lakes region. The GLTP presents a prime opportunity to facilitate the crucial continued flow of energy throughout the region while protecting the Great Lakes.

Therefore, we request a staff-level briefing on the status of the environmental review process for the GLTP, including information on how current timelines comply with *NEPA* timelines mandated in law. Please provide this briefing as soon as possible, but no later than December 13, 2023.

Pursuant to House Rule X, clause 1(r), the Committee has jurisdiction over these issues and shall conduct appropriate oversight of these actions. If you have any questions, please contact Corey Kuipers, Professional Staff Member, with the Subcommittee on Water Resources and Environment at (202) 225-9446. Thank you for your prompt attention to this matter.

Sincerely,



David Rouzer  
Chairman  
Subcommittee on Water Resources  
and Environment



John James  
Vice Chairman  
Subcommittee on Water Resources  
and Environment

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<sup>33</sup> See Army Corps Permit Application & State Permit Timeline, *supra* note 11.

<sup>34</sup> See generally Agreement Concerning Transit Pipelines, Canada-United States, (Jan. 28, 1977), 28 U.S.T. 7449; see also Nia Williams & Sebastien Malo, *Canada invokes 1977 pipeline treaty with U.S. over Line 5 dispute*, REUTERS, (Oct. 4, 2021), available at <https://www.reuters.com/business/energy/canada-formally-invokes-1977-pipeline-treaty-with-us-over-line-5-dispute-2021-10-04>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

Assistant Secretary Connor

November 29, 2023

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cc: The Honorable Grace Napolitano, Ranking Member  
Subcommittee on Water Resources and Environment

The Honorable Emilia Strong Sykes, Vice Ranking Member  
Subcommittee on Water Resources and Environment