
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BAD RIVER BAND OF THE
LAKE SUPERIOR TRIBE OF
CHIPPEWA INDIANS OF THE
BAD RIVER RESERVATION,
Plaintiff/Counterclaim Defendant,

Case No. 3:19-cv-602-wmc
Judge William M. Conley
Magistrate Judge Stephen L. Crocker

v.

ENBRIDGE ENERGY COMPANY, INC.;
and ENBRIDGE ENERGY, L.P.,
Defendants/Counter-Claimants,

v.

NAOMI TILLISON, Director of
Mashkiiziibii Natural Resources
Department of the Bad River
Band of the Lake Superior
Tribe of Chippewa Indians of the
Bad River Reservation,
in her Official Capacity,
Counterclaim Defendant

**CHAMBERS' AMICI CURIAE BRIEF IN SUPPORT
OF THE DEFENDANTS'/COUNTER-CLAIMANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Scott E. Rosenow
WMC Litigation Center
501 East Washington Avenue
Madison, Wisconsin 53703
608-661-6918 / srosenow@wmc.org

*Counsel for Wisconsin Manufacturers & Commerce, Inc., the Chamber of Commerce
of the United States of America, the Michigan Chamber of Commerce, and the Ohio
Chamber of Commerce*

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INTRODUCTION AND INTEREST OF AMICI CURIAE

The Chamber of Commerce of the United States of America, Wisconsin Manufacturers and Commerce, the Michigan Chamber of Commerce, and the Ohio Chamber of Commerce (collectively, the “Chambers”) submit this non-party brief in support of the motion for partial summary judgment by Defendants/Counter-Claimants Enbridge Energy Company, Inc., and Enbridge Energy, L.P. The Chambers together represent hundreds of thousands of businesses, and this case could greatly impact their members.

Although this case is ostensibly about a 12-mile stretch of a petroleum pipeline known as Line 5, this entire interstate and international pipeline would need to be shut down if the plaintiffs succeed in this lawsuit. The pipeline runs, in part, from Canada through Wisconsin and into Michigan where it crosses the Straits of Mackinac. Even a temporary shutdown of Line 5 would greatly harm the Chambers, their members, their members’ employees, and the residents and economies of the United States and Canada, which rely on the oil and natural gas liquids that Line 5 transports. Such a shutdown would constrain an already disrupted energy supply, an especially troubling development given recent decisions to limit the importation of petroleum products from Russia. As explained below, this Court should consider the likely severe, nationwide, and international impacts of a shutdown when it decides this case.¹

¹ No party’s counsel authored this brief in whole or in part. No party or party’s counsel contributed money that was intended to fund preparing or submitting this brief. No person other than the *amici curiae*, their members, or their counsel has contributed or will contribute money that was intended to fund preparing or submitting this brief.

DISCUSSION

I. Pipelines supply the United States and Canada with a vital resource and help enable energy independence.

“If America’s energy supplies are the lifeblood of our economy, then we can think of pipelines as something like the nation’s circulatory system.”² In the United States, for example, “pipelines are used to bring us about 90% of our petroleum and virtually all of our natural gas — which is pretty significant, given that those two power sources alone make up about 70% of the country’s entire energy use.”³

Since 2010, the Midwest region’s imports of propane have increased by 63%, and it now supplies propane to the southern and eastern United States.⁴ The U.S. Department of Energy identifies supply loss to refineries in the Midwest as a vulnerability or threat to energy supplies to many states, including Michigan, Ohio, and Wisconsin.⁵

² *Pipe Dreams: How America Gets Energy*, KITEANDKEYMEDIA.COM, April 2022, <https://www.kiteandkeymedia.com/videos/how-oil-petroleum-natural-gas-pipelines-support-american-energy-demands-keystone-xl-infrastructure/>.

³ *Pipe Dreams: How America Gets Energy*, KITEANDKEYMEDIA.COM, April 2022 (footnote omitted), <https://www.kiteandkeymedia.com/videos/how-oil-petroleum-natural-gas-pipelines-support-american-energy-demands-keystone-xl-infrastructure/>.

⁴ PUBLIC SECTOR CONSULTANTS, PREPARED FOR MICH. DEP’T OF ENV’T, GREAT LAKES AND ENERGY AND MICH. PUB. SERV. COMM’N, *Analysis of Propane Supply Alternatives for Michigan*, at 16–17 (March 2020), <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Groups/UPETF/Report-2020-03-00-Analysis-Propane-Alternatives-ML.pdf?rev=98ebb04249fb4eef999ad1b81c015174&hash=D7734CEBC1161CA87AE6D5ABBB6F4FAF>.

⁵ INTEK, INC., OFF. OF ENERGY POL’Y & SYS. ANALYSIS, *United States Fuel Resiliency: Volume III: U.S. Fuels Supply Infrastructure Vulnerabilities and Resiliency*, at 27 (2014), <https://www.energy.gov/sites/prod/files/2015/04/f22/QR%20Analysis%20-%20United%20States%20Fuel%20Resiliency%20Volume%20III.pdf>.

Even temporary disruptions to the energy supply can cause tumult, as seen during the six-day disruption last year resulting from the Colonial Pipeline cyberattack and subsequent shutdown. Many gas stations along the Eastern Seaboard ran out of fuel, including 88% in Washington, D.C., 65% in North Carolina, and nearly 50% in Virginia, South Carolina, and Georgia. In total, the shutdown affected more than 16,000 gas stations.⁶

Unfortunately, “energy markets are in one of their deepest crises of price and supply in decades.”⁷ “Gasoline prices have been spiking across the U.S. and Canada, a combination of production and supply-chain pressures created by the COVID-19 pandemic and exacerbated by bans on imports of Russian energy, part of the global effort to sanction Russia over its ongoing invasion of Ukraine.”⁸ The U.S. government’s recent embargo on Russian energy, for instance, caused the price of gasoline to hit “a nationwide average of \$4.17 per gallon, an all-time high since 2008.”⁹

A dearth of pipeline infrastructure exacerbates fuel shortages and price hikes. Residents of Boston, for example, “were paying 400% more for natural gas” in

⁶ Stephanie Kelly and Laura Sanicola, *U.S. Capital Running Out of Gas, Even as Colonial Pipeline Recovers*, REUTERS, May 14, 2021, <https://www.reuters.com/business/energy/colonial-pipeline-ramps-up-us-seeks-emerge-fuel-crunch-2021-05-14/>.

⁷ Ajit Niranjana, *Russia-Ukraine War Risks Greater Carbon Pollution Despite Boost to Clean Energy*, DW.COM, March 15, 2022, <https://p.dw.com/p/48Ur9>.

⁸ The Canadian Press, *Michigan Wants “to Have Its Cake and Eat It Too” on Line 5: Chambers of Commerce*, YAHOO! FINANCE, March 17, 2022, <https://ca.finance.yahoo.com/news/michigan-wants-cake-eat-too-080000388.html>.

⁹ Jason Siegelin & Joe Bingham, *Russia’s Aggression Against Ukraine is Being Fed by America’s Lack of Energy Independence*, REALCLEARENERGY.ORG, April 13, 2022, https://www.realclearenergy.org/articles/2022/04/13/russias_aggression_against_ukraine_is_being_fed_by_americas_lack_of_energy_independence_827010.html.

January 2022 than residents of Pennsylvania.¹⁰ The reason: “the state of Massachusetts refused to allow a pipeline to bring [gas] from Pennsylvania,” so residents of Boston got their gas from Russia instead.¹¹

Energy independence would not only lower prices and keep the lights on but help protect national security. Delays and obstacles to pipeline projects have forced North America to import oil “from countries whose human rights records are dire.”¹² But “if the U.S. can export natural gas, oil, and coal to its allies, then Russia will no longer be in position to ‘blackmail’ western democracies.”¹³

Given Russia’s invasion of Ukraine and the sensitivity of the global energy market, we need better alternatives to Russian oil to ensure the United States and Canada have energy to keep critical infrastructure online and the economy running smoothly. Domestic pipelines, including Line 5, are key alternatives to foreign oil and align with national security interests.

¹⁰ *Pipe Dreams: How America Gets Energy*, KITEANDKEYMEDIA.COM, April 2022, <https://www.kiteandkeymedia.com/videos/how-oil-petroleum-natural-gas-pipelines-support-american-energy-demands-keystone-xl-infrastructure/>.

¹¹ *Pipe Dreams: How America Gets Energy*, KITEANDKEYMEDIA.COM, April 2022, <https://www.kiteandkeymedia.com/videos/how-oil-petroleum-natural-gas-pipelines-support-american-energy-demands-keystone-xl-infrastructure/>.

¹² *Economic Relationship Between Canada and the United States*, Special Committee on the Economic Relationship Between Canada and the United States, 43rd Parliament (2021) (statement of Bronwyn Eyre, Minister of Energy and Resources, Government of Saskatchewan), <https://www.ourcommons.ca/DocumentViewer/en/43-2/CAAM/meeting-6/evidence#Int-11215499>.

¹³ Kevin Mooney, *How Big Green Undermines Pennsylvania’s Energy Potential*, REALCLEARENERGY.ORG, April 14, 2022, https://www.realclearenergy.org/articles/2022/04/14/how_big_green_undermines_pennsylvanias_energy_potential_827185.html.

II. Line 5 is a crucial part of the interstate and international energy market.

Line 5 provides much-needed energy to Wisconsin. “Wisconsin’s business community depends on access to affordable and reliable energy, and maintaining energy infrastructure like Line 5 is a key component of that.”¹⁴ Congressman Tom Tiffany has described Line 5 as “critical,” noting that about 30 percent of his constituents in northern Wisconsin use propane to heat their homes.¹⁵ A separation facility in Superior, Wisconsin, for example, “is responsible for about 7 percent of the total propane supply for Wisconsin and Minnesota, and a much higher percentage of propane supply for just northern Wisconsin and Minnesota.” (Dkt. 204:4.)

This pipeline provides a crucial source of energy for Wisconsin farmers and papermakers, among others. “Removing Line 5 from operation would send waves through our regional propane and fuel supply, [undoubtedly] leading to shortages and price increases farmers simply can’t afford,” said Keith Ripp, Executive Director of Governmental Relations for the Wisconsin Farm Bureau Federation.¹⁶ And, as explained by the Wisconsin Paper Council’s President, Scott Suder, “Wisconsin’s papermakers and forest products companies couldn’t survive without access to reliable and affordable energy[.] . . . Pipelines like Line 5 not only safely and reliably

¹⁴ Press Release, *WMC Testifies in Support of Enbridge Line 5 Relocation Project, Urges Members to Submit Comments in Support of Project*, WMC.ORG, Feb. 5, 2022, <https://www.wmc.org/issues/energy-utilities/wmc-testifies-in-support-of-enbridge-line-5-relocation-project-urges-members-to-submit-comments-in-support-of-project/>.

¹⁵ M.D. Kittle, *The Pipeline War*, WISCONSINSPOTLIGHT.COM, March 20, 2022, <https://wisconsinspotlight.com/the-pipeline-war/>.

¹⁶ *Wisconsin Jobs and Energy Coalition: Line 5 Pipeline supporters submit thousands of comments to Wisconsin DNR*, WISPOLITICS.COM, 2022, https://www.wispolitics.com/2022/wisconsin-jobs-and-energy-coalition-line-5-pipeline-supporters-submit-thousands-of-comments-to-wisconsin-dnr/?fbclid=IwAR0Ofe79d-3cWvVxT2nlGoXUPzAsaJ2RDGjnFbiMEUWSBO_co0rlujH0ZuY.

move energy to where it's needed, they free up capacity for trucks and trains to move other goods like paper products.”¹⁷

This pipeline is also crucial to areas outside Wisconsin. “Line 5 as interstate and international infrastructure is critical to North America’s energy security.”¹⁸ This pipeline “has been in use since 1953, and transports up to 540,000 barrels of light crude oil and natural gas liquids per day.”¹⁹ These petroleum products are refined into propane, gasoline, jet fuel and other products at refineries and factories in Ontario and Quebec, as well as in Indiana, Michigan, Ohio and Pennsylvania.”²⁰ “Line 5 delivers more than half the propane and home heating oil consumed in Michigan, and is a vital source of energy for Ohio and Pennsylvania as well”²¹ This pipeline also “supplies central Canada with gasoline, jet fuel and heating fuel.”²²

¹⁷ *Wisconsin Jobs and Energy Coalition: Line 5 Pipeline supporters submit thousands of comments to Wisconsin DNR*, WISPOLITICS.COM, 2022, https://www.wispolitics.com/2022/wisconsin-jobs-and-energy-coalition-line-5-pipeline-supporters-submit-thousands-of-comments-to-wisconsin-dnr/?fbclid=IwAR00fe79d-3cWYVxT2nlGoXUPzAsaJ2RDGjnFbiMEUWSBO_co0rlujH0ZuY.

¹⁸ *Economic Relationship Between Canada and the United States*, Special Committee on the Economic Relationship Between Canada and the United States, 43rd Parliament (2021) (statement of Aaron Henry, Senior Director, Natural Resources and Sustainability, Canadian Chamber of Commerce), <https://www.ourcommons.ca/DocumentViewer/en/43-2/CAAM/meeting-4/evidence#Int-11189683>.

¹⁹ HOUSE OF COMMONS, *Enbridge’s Line 5: An Interim Report*, 43rd Parliament, 2nd Session (2021), at 3, <https://www.ourcommons.ca/Content/Committee/432/CAAM/Reports/RP11234513/caamrp01/caamrp01-e.pdf>.

²⁰ HOUSE OF COMMONS, *Enbridge’s Line 5: An Interim Report*, 43rd Parliament, 2nd Session (2021), at 3, <https://www.ourcommons.ca/Content/Committee/432/CAAM/Reports/RP11234513/caamrp01/caamrp01-e.pdf>.

²¹ M.D. Kittle, *The Pipeline War*, WISCONSINSPOTLIGHT.COM, March 20, 2022, <https://wisconsinspotlight.com/the-pipeline-war/>.

²² *Economic Relationship Between Canada and the United States*, Special Committee on the Economic Relationship Between Canada and the United States, 43rd Parliament (2021) (statement of Aaron Henry, Senior Director, Natural Resources and Sustainability, Canadian Chamber of Commerce), <https://www.ourcommons.ca/DocumentViewer/en/43-2/CAAM/meeting-4/evidence#Int-11189683>.

Line 5 thus has strong support from “[a] diverse coalition consisting of union workers, farmers, small business owners and forest products companies.”²³

Line 5 has “no alternative.”²⁴ Without this pipeline, for example, “approximately 3,100 loaded and empty tanker trucks would be added to Wisconsin’s roads every day.” (Dkt. 206:3.) But infrastructure does not currently exist to replace Line 5: “the [natural gas liquids] and crude oil shortfalls resulting from a Line 5 closure could not be satisfied by any alternate means of transportation, including rail, barge, or truck.” (Dkt. 206:2.) And “even if one were to assume that there was a feasible way to transport Line 5 products by rail, the cost to transport Line 5 products by rail rather than pipeline would be much higher.” (Dkt. 206:8.) The costs to transport by rail would be 2.6 times higher for crude oil and 3.4 times higher for natural gas liquids than Line 5 transportation costs. (Dkt. 206:8.)

III. A shutdown of Line 5, even temporarily, would greatly harm the United States and Canada.

Not surprisingly, even a temporary shutdown of Line 5 would cause substantial harm to the United States and Canada. Shutting down Line 5 before a reroute is possible “would have substantial adverse impacts on the economy, workers in a variety of sectors, and households throughout Michigan, Wisconsin, and

²³ *Wisconsin Jobs and Energy Coalition: Line 5 Pipeline supporters submit thousands of comments to Wisconsin DNR*, WISPOLITICS.COM, 2022, https://www.wispolitics.com/2022/wisconsin-jobs-and-energy-coalition-line-5-pipeline-supporters-submit-thousands-of-comments-to-wisconsin-dnr/?fbclid=IwAR0Ofe79d-3cWyVxT2nlGoXUPzAsaJ2RDGjnFbiMEUWSBO_co0rlujH0ZuY.

²⁴ *Economic Relationship Between Canada and the United States*, Special Committee on the Economic Relationship Between Canada and the United States, 43rd Parliament (2021) (statement of Aaron Henry, Senior Director, Natural Resources and Sustainability, Canadian Chamber of Commerce), <https://www.ourcommons.ca/DocumentViewer/en/43-2/CAAM/meeting-4/evidence#Int-11189683>.

Ontario.” (Dkt. 205:2.) Those “adverse impacts include shortages of critical heating fuels and refined products, resulting in: a) an increase in prices, and b) widespread shortages in Wisconsin, Northeastern Minnesota, and the Upper Peninsula of Michigan.” (Dkt. 205:2.)

If Line 5 were shut down, ten refiners in Ohio, Michigan, Pennsylvania, Ontario, and Quebec would lose about 38% of their total crude oil supply. (Dkt. 204:5.) Such a closure would cause refiners to “suffer impacts ranging from significant to severe until a re-route of Line 5 around the Bad River Reservation is completed.” (Dkt. 204:6.) “[I]t is quite possible that one or more [refiners] will close if Line 5 is shut down for any period of time.” (Dkt. 204:8.)

Indeed, closure of Line 5 “would have catastrophic economic impacts to Canada.”²⁵ “For example, 25% of propane that is marketed in Ontario is used in hospitals, schools and businesses. In Quebec, that number rises to 45%.”²⁶ “However, without Line 5, providing Canadians with this critical source of energy would be significantly more difficult.”²⁷

²⁵ *Economic Relationship Between Canada and the United States*, Special Committee on the Economic Relationship Between Canada and the United States, 43rd Parliament (2021) (statement of Dan Kelly, Past Chair, Canadian Propane Association),

<https://www.ourcommons.ca/DocumentViewer/en/43-2/CAAM/meeting-5/evidence#Int-11192086>.

²⁶ *Economic Relationship Between Canada and the United States*, Special Committee on the Economic Relationship Between Canada and the United States, 43rd Parliament (2021) (statement of Dan Kelly, Past Chair, Canadian Propane Association),

<https://www.ourcommons.ca/DocumentViewer/en/43-2/CAAM/meeting-5/evidence#Int-11192086>.

²⁷ *Economic Relationship Between Canada and the United States*, Special Committee on the Economic Relationship Between Canada and the United States, 43rd Parliament (2021) (statement of Dan Kelly, Past Chair, Canadian Propane Association),

<https://www.ourcommons.ca/DocumentViewer/en/43-2/CAAM/meeting-5/evidence#Int-11192086>.

Besides providing critical energy, Line 5 supports countless jobs directly and indirectly in the United States and Canada. Shutting down Line 5 would have a devastating effect on many sectors of the economy and would destroy thousands of jobs. (Dkt. 205:3–4.) Affected industries would include agriculture, pharmaceuticals, electronics, and medical supplies.²⁸ “[A] Line 5 closure would result in job losses and lost economic output throughout the Great Lakes region, as well as in Canada, particularly Ontario.” (Dkt. 205:2.) “Low-income households will be particularly impacted by shortages and price increases.” (Dkt. 205:2.) “However, the consequences won’t be restricted to the states and provinces that are directly affected. The negative impact would be nationwide in both countries.”²⁹ A closure of Line 5 would likely cause an economic loss for the United States and Canada totaling billions of dollars per year. (Dkt. 205:4.)

²⁸ *Economic Relationship Between Canada and the United States*, Special Committee on the Economic Relationship Between Canada and the United States, 43rd Parliament (2021) (statement of Joseph Mancinelli, International Vice-President, Central and Eastern Canada Regional Manager, Laborers’ International Union of North America),

<https://www.ourcommons.ca/DocumentViewer/en/43-2/CAAM/meeting-5/evidence#Int-11191807>.

²⁹ *Economic Relationship Between Canada and the United States*, Special Committee on the Economic Relationship Between Canada and the United States, 43rd Parliament (2021) (statement of Joseph Mancinelli, International Vice-President, Central and Eastern Canada Regional Manager, Laborers’ International Union of North America),

<https://www.ourcommons.ca/DocumentViewer/en/43-2/CAAM/meeting-5/evidence#Int-11191807>.

CONCLUSION

This Court should consider the severe adverse effects that a shutdown of Line 5 would have as it decides this matter.

Respectfully submitted this 10th day of May 2022.

s/ Scott E. Rosenow _____
Scott E. Rosenow
WMC Litigation Center
501 East Washington Avenue
Madison, Wisconsin 53703
608-661-6918 / srosenow@wmc.org

*Counsel for Wisconsin Manufacturers & Commerce, Inc.,
the United States Chamber of Commerce,
the Michigan Chamber of Commerce,
and the Ohio Chamber of Commerce*