BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Enbridge Energy, Limited Partnership
Pursuant to Wis. Stat. § 32.02(13) that the Proposed Real
Estate Interest Acquisitions Associated with the Relocation
of Line 5, Located in Ashland County and Iron County,
Wisconsin, are in the Public Interest

Docket No. 9230-PI-101

REQUEST FOR A CONTESTED CASE HEARING AND TO INTERVENE OF
SIERRA CLUB – JOHN MUIR CHAPTER, HONOR THE EARTH, LEAGUE OF
WOMEN VOTERS OF WISCONSIN, SUPERIOR RIVERS WATERSHED
ASSOCIATION, AND 350 MADISON AND NOTICE OF APPEARANCE

Pursuant to Wis. Stat. § 227.42(1), Sierra Club – John Muir Chapter, Honor the Earth,
League of Women Voters of Wisconsin, Superior Rivers Watershed Association, and 350 Madison
(collectively, “Prospective Intervenors”) hereby request the Public Service Commission of
Wisconsin (“PSC”) for a hearing to be held as a contested case in the above captioned docket
currently pending before the PSC. Because this request requires a determination that Prospective
Intervenors have substantial interests in the outcome of this docket, this request encompasses a
subsidiary request to intervene as of right pursuant to Wis. Stat. § 227.44(2m) and Wis. Admin.
Code PSC § 2.21(1). In the alternative, Prospective Intervenors request permissive intervention
pursuant to Wis. Admin. Code PSC § 2.21(2).

I. REQUEST FOR A CONTESTED CASE HEARING

Wis. Stat. 227.42(1) provides a right to a contested case hearing if:

a. A substantial interest of the person is injured in fact or threatened with injury by agency
   action or inaction;

b. There is no evidence of legislative intent that the interest is not to be protected;
c. The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and
d. There is a dispute of material fact.

Prospective Intervenors satisfy these criteria and therefore request that the PSC grant a contested case hearing, which necessarily requires reclassification of this docket from an investigation to a proceeding as those terms are defined in Wis. Admin. Code PSC § 2.02. To the extent the PSC denies the request for a contested case hearing, this filing also includes a general request for intervention pursuant to Wis. Stat. § 227.44(2m) and Wis. Admin. Code PSC § 2.21 and consistent with the Notice of Investigation the PSC filed on May 7, 2020.

a. Statements of Substantial Interest

Prospective Intervenors have a substantial interest in the outcome of this docket. Wis. Stat. § 227.42(1)(a) provides the right to a contested case hearing, i.e., a proceeding, if “[a] substantial interest of the person is injured in fact or threatened with injury by agency action or inaction.” Wis. Stat. § 227.44(2m) provides that “[a]ny person whose substantial interest may be affected by the decision following the hearing shall, upon the person’s request, be admitted as a party.” Finally, Wis. Admin. Code PSC § 2.21(1) provides that “[a] person whose substantial interests may be affected by the commission’s action or inaction in a proceeding shall be admitted as an intervenor.”

This docket requires the PSC to determine whether authorizing Enbridge Energy, LP (hereinafter, “Enbridge”) to condemn the real estate interests identified in its Public Interest Determination Application for the Line 5 Wisconsin Segment Relocation Project (hereinafter, “New Line 5 Segment”) is in the “public interest.” Wis. Stat. § 32.02(13). Enbridge asserts that acquiring the identified real estate interests is in the public interest because Line 5, among other things, “is an important piece of energy infrastructure that transports essential fuels that heat
homes, schools and business, powers transportation, and fuels industry in Wisconsin, the larger Midwest region, and Eastern Canada.” Public Interest Determination Application, ¶ 6. These purported benefits are the direct result of what Enbridge intends to do once it obtains the identified real estate interests—construct the New Line 5 Segment and continue to operate Line 5 in environmentally sensitive areas.

To adequately determine whether authorizing Enbridge to condemn the identified real estate interests is in the public interest, the PSC must weigh the purported benefits against the accompanying costs. Since the PSC’s public interest determination will facilitate construction of the New Line 5 Segment and the continued operation of Line 5, and since the resulting costs affect the substantial interests of Prospective Intervenors established below, this docket will affect those substantial interests. As such, this docket should be reclassified as a proceeding and intervention should be granted as a matter of right.

i. **Sierra Club – John Muir Chapter**

Sierra Club – John Muir Chapter (hereinafter, “Sierra Club”) is based in Madison, Wisconsin and has approximately 18,000 members throughout the state, many of whom live, work, and recreate near the New Line 5 Segment and other Line 5 segments. Sierra Club and its members have worked tirelessly to stop fossil fuel infrastructure projects such as the New Line 5 Segment and to promote both energy conservation and clean energy alternatives. This work not only addresses the adverse environmental, public health, and economic impacts due to the transportation and ultimate combustion of fossil fuels, but also the immediate adverse environmental and public health impacts that occur from pipeline construction. The New Line 5 Segment is contrary to the goals of the Sierra Club and its members because it would entrench fossil fuel infrastructure in northern Wisconsin for generations to come and promotes continued
reliance on fossil fuels rather than energy conservation and clean energy alternatives. Construction of the New Line 5 Segment and the continued operation of Line 5 would also result in the very adverse environmental, public health, and economic impacts that Sierra Club and its members seek to prevent. Sierra Club’s members who live, work, and recreate near the New Line 5 Segment and other Line 5 segments are particularly at risk from those adverse impacts. Accordingly, the PSC’s public interest determination in this docket will affect Sierra Club’s and its members’ substantial interests.

ii. Honor the Earth

Honor the Earth is an Indigenous-led organization based in Callaway, Minnesota that works primarily on issues of advocacy and support for Native communities. Honor the Earth’s mission is rooted in Anishinaabeg traditions, which recognizes the wealth of a land-based economy and the need to safeguard waters for wild rice, trees for maple syrup, lakes and rivers for fish, and land and aquifers for all human and non-human relatives. The organization works nationally and internationally with Indigenous peoples, many of whom are impacted by pipeline projects such as the New Line 5 Segment, to protect and acknowledge the sacredness of water. This includes Honor the Earth’s No Fossil Fuels in the Great Lakes campaign that seeks to protect land and water from the adverse impacts of fossil fuel infrastructure like Line 5 and encourage a just transition away from fossil fuels to renewable energy and an economy that is ecologically sustainable and equitable for all. The New Line 5 Segment is directly contrary to the goals of Honor the Earth because it would entrench fossil fuel infrastructure in northern Wisconsin for generations to come and undermine efforts towards a just transition. Honor the Earth has a particular interest in protecting the Ojibwe treaty-reserved natural resources directly in the path and downstream of the New Line 5 Segment. As adverse impacts to these resources may harm Indigenous environmental, public,
and cultural health, a determination that authorizing Enbridge to condemn the identified real estate interests for the New Line 5 Segment will affect Honor the Earth’s substantial interests.

iii. League of Women Voters of Wisconsin

League of Women Voters of Wisconsin (hereinafter, “the League”) is based in Madison, Wisconsin and has approximately 2,500 members. The League is a non-partisan organization that encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. Members of the League are women and men who work to improve our systems of government and public policy. The League operates at the local, state, and national levels with regional and local chapters, like the Ashland and Bayfield Counties League. Since the 1960s, the League and its local chapters have been at the forefront of efforts to protect air, land, and water resources. The League advocates for water quality improvements throughout the Great Lakes Basin with an emphasis on water pollution prevention. This advocacy includes the preservation and enhancement of the environmental integrity and quality of the Bad River Watershed and Lake Superior.

The League, including its local chapter the Ashland and Bayfield Counties League, has an interest in protecting the unique, remote, and challenging terrain of northern Wisconsin where the New Line 5 Segment is proposed. Members of the League live, work, and recreate near the path of the New Line 5 Segment and other Line 5 segments. Construction and operation of the New Line 5 Segment will result in actual and potential adverse impacts to wetlands, streams, and water bodies, as well as the flora and fauna that depend on them—impacts that are exacerbated by extreme weather events, like floods, that are becoming more common. These adverse impacts will harm the League and its members’ interests in the integrity of the Bad River Watershed and Lake Superior. These impacts will also impair the ability the League and its members to visit and enjoy
their favorite spots for recreating, including harming their interests in fishing, paddling, hiking, and birdwatching. Acquiring the identified property interests is an important regulatory step that will facilitate construction of the New Line 5 Segment and continued operation of Line 5 in environmentally sensitive areas. Accordingly, this docket will affect the League’s and its members’ substantial interest.

iv. Superior Rivers Watershed Association

Superior Rivers Watershed Association (“SRWA”) is based in Ashland, Wisconsin. SRWA and its members are long-time stewards of the Bad River Watershed and Lake Superior. In furtherance of SRWA’s mission to restore and protect these pristine water resources, staff and volunteers have contributed to the designation of 363 stream-miles of Outstanding and Exceptional Resource Waters. SRWA’s culvert and fish passage restoration program has also reconnected over 30 miles of high-quality cold-water streams within the Bad River Watershed. The New Line 5 Segment will cross 182 waterbodies, most of which are located within the Bad River Watershed and all of which feed into Lake Superior. Of these waterbodies, 17 are designated trout streams, many of which have also been designated as Exceptional Resource Waters as a result of SRWA’s work. Methods that Enbridge will use to cross waterbodies include in-stream trenching, blasting, and directional boring, all of which will cause temporary and permanent hydrologic impacts. The continued operation of Line 5 also puts all the waterbodies downstream of these crossings, including but not limited to the Bad River, the Kakagon-Bad River Sloughs, and Lake Superior, at significant risk from a spill. Accordingly, a determination that authorizing Enbridge to condemn the identified real estate interests is in the public interest will affect SRWA’s and its members’ substantial interests.
v. 350 Madison

350 Madison has over 175 members who reside across Wisconsin, including in Ashland and Iron Counties where the New Line 5 Segment will be constructed. 350 Madison and its members have a significant history of seeking environmentally sound outcomes while defending the rights of landowners and local communities throughout Wisconsin in public policy debates about the use of eminent domain for hazardous liquid pipelines. Over its eight-year history, 350 Madison has assisted landowners with asserting their legal rights before Wisconsin courts and has advocated for policies that limit the ability to use the power of eminent domain in ways that diminish property rights and threaten the environment. 350 Madison has also supported local communities who are concerned about continued reliance on fossil fuels as an energy source and the resulting adverse environmental and public health impacts. The group has further promoted its interest in these matters through public education on how the continued exercise of eminent domain for fossil fuel infrastructure prevents a rapid and just transition away from fossil fuels and exacerbates environmental degradation. A determination that authorizing Enbridge to condemn the identified real estate interests for the New Line 5 Segment is in the public interest would directly undermine the goals and efforts of 350 Madison and its members in their communities and beyond. Accordingly, the PSC’s public interest determination in this docket will affect 350 Madison’s and its members’ substantial interests.

b. There is No Legislative Intent Not to Protect Prospective Intervenors’ Substantial Interests and the Injury to Prospective Intervenors is Different in Kind or Degree from Injury to the General Public

There is no evidence of legislative intent that Prospective Intervenors’ substantial interests established above are not to be protected. Wis. Stat. § 32.02(13) requires the PSC to determine whether authorizing Enbridge to condemn the identified real estate interests is in the public
interest. This language is extremely inclusive, and as such members of the public, including Prospective Intervenors, who establish a substantial interest in the outcome of this docket that is threatened with injury and is different in kind or degree from the general public have a right to a contested case hearing.

The injury to Prospective Intervenors that would occur from a determination that authorizing Enbridge to condemn the identified real estate interests for the New Line 5 Segment is in the public interest is different in kind or degree from injury to the general public because Prospective Intervenors’ members live, work, and recreate near the New Line 5 Segment and other Line 5 segments; Prospective Intervenors and their members have worked to protect the natural resources in the Bad River Watershed where the New Line 5 Segment will be constructed and in the Great Lakes Basin where the entirety of Line 5 is located, and those natural resources are threatened with injury; and Prospective Intervenors have worked to encourage a just transition away from fossil fuel consumption to clean energy sources. Prospective Intervenors and their members therefore have particularly direct and unique interests in the physical environment that are threatened with injury by the outcome of this docket.

c. There Are Disputed Issues of Material Fact

Prospective Intervenors dispute the following facts that are material to the PSC’s public interest determination:

1. Whether there is sufficient market demand for crude oil and natural gas liquids in Wisconsin and/or the Great Lakes region in the United States and Canada to support the New Line 5 Segment and whether those energy demands can be reasonably met through other means.
2. Whether and to what extent Line 5 currently provides or will provide services directly to Wisconsin and whether those services can be reasonably provided through other means.

3. Whether the continued operation of Line 5 puts the public health, environment, cultural resources, and economy of Wisconsin, and/or the Great Lakes region in the United States and Canada, including Indigenous peoples, at risk.

4. Whether construction of the New Line 5 Segment will result in temporary or permanent adverse impacts to the public health and environment.

While resolving these factual issues will certainly aid the PSC in making its public interest determination and alone satisfy the criterion that there be disputed issues of material fact, Prospective Intervenors note the preliminary stage of the docket and may seek to raise additional factual issues as the docket progresses.

II. PERMISSIVE INTERVENTION

In the alternative, Prospective Intervenors should be granted permissive intervention in this docket. Wis. Admin. Code PSC § 2.21(2) provides that “[a] person not satisfying the criteria of [Wis. Admin. Code PSC § 2.21(1)] may nevertheless intervene in a proceeding or docket if the person’s participation likely will promote the proper disposition of the issues to be determined in the proceeding or docket and if the person’s participation will not impede the timely completion of the proceeding or docket.” Prospective Intervenors’ wide breadth of interests in and experience with the issues to be determined in this docket will promote the proper disposition of those issues. Although no schedule has been set yet, Prospective Intervenors will also comply with all PSC deadlines for this docket. Therefore, pursuant to Wis. Admin. Code PSC § 2.21(2), permissive intervention is appropriate.
III. NOTICE OF APPEARANCE

Rob Lee, Andrea Gelatt, and Robert Lundberg will serve as the attorneys of record for the Sierra Club – John Muir Chapter, Honor the Earth, League of Women Voters of Wisconsin, Superior Rivers Watershed Association, and 350 Madison in this docket. All further documents and correspondence should be served on:

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IV. CONCLUSION

Because Prospective Intervenors’ substantial interests are threatened with injury, there is no legislative intent not to protect those interests, the injury to Prospective Intervenors is different in kind or degree from injury to the general public, and there are disputed issues of material fact, Prospective Intervenors meet the statutory criteria for a contested case hearing. As a result, the PSC should grant intervention as of right and reclassify the docket to a proceeding to be conducted as a contested case. In the alternative, the PSC should grant permissive intervention.

Respectfully submitted this 21st day of May, 2020.

/\ Rob Lee
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