



Protecting the Common Waters of the Great Lakes Basin
Through Public Trust Solutions

May 1, 2020

Via E-filing

Ms. Lisa Felice
Michigan Public Service Commission
7109 W. Saginaw Hwy.
P. O. Box 30221
Lansing, MI 48909

RE: MPSC Case No. U-20763

Dear Ms. Felice:

The following is attached for paperless electronic filing:

Petition for Permissive Intervention by For Love of Water (FLOW) and Exhibit A
(Affidavit of Elizabeth Kirkwood);

Appearance of James Olson on behalf of For Love of Water; and

Proof of Service.

Sincerely,

James Olson
jim@flowforwater.org

xc: Parties to Case No. U-20763

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
PUBLIC SERVICE COMMISSION

ENTRY OF APPEARANCE IN AN ADMINISTRATIVE HEARING

This form is issued as provided for by 1939 PA 3, as amended, and by 1933 PA 254, as amended. The filing of this form, or an acceptable alternative, is necessary to ensure subsequent service of any hearing notices, Commission orders, and related hearing documents.

General Instructions:

Type or print legibly in ink. For assistance or clarification, please contact the Public Service Commission at (517) 284-8090.

Please Note: The Commission will provide electronic service of documents to all parties in this proceeding.

THIS APPEARANCE TO BE ENTERED IN ASSOCIATION WITH THE ADMINISTRATIVE HEARING:

Case / Company Name: Enbridge Energy, Limited Partnership Docket No. U-20763

Please enter my appearance in the above-entitled matter on behalf of:

1. (Name)
For Love of Water (FLOW)
2. (Name)
3. (Name)
4. (Name)
5. (Name)
6. (Name)
7. (Name)

Name James M. Olson
Address 153 1/2 East Front Street
Suite 203C
City Traverse City State MI
Zip 49684 Phone (231) 944-1568
Email jim@flowforwater.org
Date May 1, 2020

Signature: 
James M. Olson
2020.05.01 14:14:44 -04'00'

☐ I am not an attorney

☒ I am an attorney whose:

Michigan Bar # is P- 18485

Bar # is: _____
(state)

Save Form

EAHR1 - 09/29/2016

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the 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

U-20763

ALJ _____

**PETITION FOR PERMISSIVE INTERVENTION BY
FOR LOVE OF WATER ("FLOW")**

1. For Love of Water ("FLOW"), a Michigan-based water, environment, and public interest organization, seeks to intervene as a permissive intervenor in this case under Rule 410 of the Commission's Rules of Practice and Procedure, R 792.10410, to represent the interests of its supporters and provide to the Commission FLOW's special expertise, experience, knowledge and unique perspective in matters related to these proceedings, including the questions of necessity and public interest under Section 16 of the Commission's Organic Act, 1929 PA 16 (MCL 483.1 et seq), the overarching interests of the public trust in the State's title and citizens beneficiary interest in the soils, bottomlands, and waters of the Great Lakes, and the State's paramount interests in the air, water, natural resources, and public health, safety and general welfare under art. 4, sec. 51 and art. 4, sec. 52 of the Michigan Constitution, implemented by the Michigan Environmental Protection Act, MCL 324.1701 et seq. ("MEPA").

2. Generally, FLOW has provided scientific, legal, and policy analyses and comments on a wide-range of issues facing the State of Michigan, its agencies and leaders, communities, sovereign Indian Tribes, public interest nonprofit organizations, and property owners in Michigan and the Great Lakes Basin. FLOW has prepared, submitted, and presented numerous reports, papers, and presentations to state officials, and international organizations (including the International Joint Commission (“IJC”)) on the overarching framework and application of public trust principles to assure protection of the integrity and sustainability of the waters, environment and quality of life in the Great Lakes basin. These reports and papers have been presented in Rochester and Buffalo, New York; Detroit, Flint, Grand Rapids, and Traverse City, Michigan; Milwaukee, Wisconsin; Chicago, Illinois; Ann Arbor, Michigan; Washington D.C.; Alberta, British Columbia, and Ontario, Canada.
3. Specifically, from 2014 to the present date, FLOW has submitted more than a dozen reports, analyses, comments, and legal memoranda (and in some instances appeared before) on Line 5, the Tunnel and new or “replacement” tunnel pipeline, and existing Line 5 to the Michigan Department of Environmental Quality, now Environment, Great Lakes, and Energy (“EGLE”), the Michigan Department of Natural Resources (“DNR”), former Attorney General William Schuette, former Governor Rick Snyder, the Michigan Petroleum Pipeline Task Force, the Michigan Petroleum Pipeline Advisory Board, Attorney General Dana Nessel, the Michigan Public Service Commission, the Mackinac Bridge Authority and Mackinac Straits Corridor Authority, and U.S. Army Corps of Engineers.¹ In these filings and comments, FLOW has

¹ These reports can be found as a matter of public record and at www.flowforwater.org. For convenience, FLOW has submitted ten public comments challenging Enbridge’s continued drumbeat request to install more and more anchors on the lakebed floors. Public Comments on the

focused on the nexus between water, energy, public and private property, health, lakes, streams, and the bottomlands and waters of the State, including the Great Lakes. This public trust defines the overarching public interest, the State's affirmative duty to protect the public trust and protected public uses, and the principles, standards, and paramount public rights of citizens, who are the legal beneficiaries of this trust, in navigation, fishing, drinking water sustenance, and health.

4. In these filings, FLOW has addressed harm, risks and alternatives associated with the existing Line 5 and/or the proposed tunnel and tunnel pipeline.² In all of these filings and comments, FLOW has continually informed the government, its agencies, task forces, and boards about the legal framework, mandates, and requirements under the rule of law in the State of Michigan; this includes Michigan water, environmental, energy and climate change, alternative pipeline capacity, alternative pipeline routes and adjustments, alternatives and markets, the State Constitution, *supra*, the Michigan Environmental Protection Act, MCL 324.1701 et seq., which is the State's constitutional commitment to art. 4, sec. 52, *supra*, and

Joint Application of Enbridge Energy for Anchor Screws for Line 5 Pipelines in the Straits of Mackinac July 19, 2018. See Public Comments on Enbridge's Studies Required by the November 2017 Agreement July 15, 2018; Public Comments on the Joint Application of Enbridge Energy for 48 New Anchor Screws for Line 5 Pipelines in the Straits of Mackinac May 11, 2018; Letter to MPSC and DEQ on New or Altered Structures of Line 5 April 11, 2018; Supplemental Comments on 2017 Anchor Permit Application February 9, 2018; FLOW Supplemental Comments on Enbridge Anchor Permit Application October 12, 2017; Supplemental Comments on the Joint Application of Enbridge Energy to Occupy Great Lakes Bottomlands for Anchoring Supports August 4, 2017; Comments on the Joint Application of Enbridge Energy to Occupy Great Lakes Bottomlands for Anchoring Supports June 29, 2017(Appendices Table of Contents: Appendix A, Appendix B, Appendix C, Appendix D., Appendix E); Supplemental Comments on 2017 Anchor Permit Application February 9, 2018.

<https://www.flowforwater.org>.

² *Id.*

public trust law pertaining to paramount public interest and rights of the public in the waters, soils, and bottomlands of Lake Michigan and the Straits of Mackinac.³

5. FLOW also submitted two amicus briefs in Michigan Courts on Line 5, including the proposed tunnel and the applicable rules of law pertaining to the overarching constitutional and legal framework of the public interest as defined by Michigan law, including Mich Const., art. 4, sec. 51 and art. 4, sec. 52, the public trust in the State's title and ownership of the bottomlands and waters of the Straits of Mackinac: *Enbridge Energy et al. v State of Michigan et al.* (Michigan Court of Claims Case No. 19-00090-MZ); *Nessel v Enbridge Energy et al.*, *Ingham County Circuit Court*, Case No. 19-474-CE).
6. FLOW's organizational supporters include among others the Straits of Mackinac Alliance, residents of the City of Mackinac Island, Oil and Water Don't Mix, and the Grand Traverse Band of Ottawa and Chippewa Indians; individual members of these organizations and individual supporters include riparian property owners and individuals citizens who use and enjoy the waters, bottomlands, natural resources and public trust in the Straits of Mackinac and extending into Lake Michigan and Lake Huron. Some of FLOW's organizational and individual supporters are threatened with directly being affected by Enbridge Energy, Limited Partnership's ("Enbridge") Application for approval of its Line 5 replacement project. Accordingly, FLOW and its organizational and individual supporters will be directly affected by the Commission's decision in this matter (see attached Affidavit of Executive Director, Elizabeth R. Kirkwood, as Exhibit A).

³ <https://flowforwater.org/resource-library/>.

7. Enbridge is seeking the Commission's approval under Public Act 16 of 1929, MCL 483.1 *et seq.* ("Act 16") and Rule 447 of the Commission's Rules of Practice and Procedure, R 792.10447, to replace the segment of its Line 5 pipeline that crosses the Straits of Mackinac with a single pipe located within a tunnel. Enbridge requests this approval in the form of a grant of authority from the Commission, or, in the alternative, "a ruling confirming that it already has the requisite authority from the Commission to construct the replacement segment of Line 5 that is the subject of this Application." (Application, p. 1.)
8. Before the Commission can approve Enbridge's Act 16 request, the Commission will consider whether "(1) the applicant has demonstrated a public need for the proposed pipeline, (2) the proposed pipeline is designed and routed in a reasonable manner, including an analysis of reasonable alternatives; and the proposed tunnel pipeline is in the public interest under Act 16 and the applicable provisions of the Michigan Constitution of 1963, laws and statutes, and the common law that define the parameters of the public interest, including the public trust in the soils, bottomlands, and waters of the Great Lakes, Michigan Const., art. 4, sec. 51 and 52, *supra*, and the MEPA, MCL 324.1701 *et seq.*; *Highway Commission v Vanderkloot*, 392 Mich 159 (1974); *Buggs v Michigan Public Service Comm'n*, 2015 W.L. 159795 (2015) (Unpublished Opinion); Ct of App. Docket Nos. 315058, 315064); *In re Enbridge Energy Limited Partnership*, Case No. U-17020, January 31, 2013, Order, p. 5.
9. Rule 410 of the Michigan Public Services Commission's Rules of Practice and Procedure, R 792.10410 provides for two categories of intervention.
 - a. Intervention by right, which requires that the party will suffer an injury-in-fact as a result of the outcome of the case, and that the party is within the zone of interest protected

by the statute. See for example, *Association of Data Processing Service Organizations, Inc v Camp*, 397 US 150; 90 S Ct 827; 250 L Ed 184 (1970).

b. Permissive intervention, where the Commission has the discretion to permit a party to intervene in the case where that party can provide useful information to the Commission or a unique perspective on the issues in the case. *In re Application of The Detroit Edison Co for Authority to Increase its Rates*, Case Nos. U-15768 and U15751, January 11, 2010, Order, p. 7 (“*In re Detroit Edison*”).

10. While FLOW may well meet both of these tests, FLOW requests this Commission to grant it permissive intervention pursuant to Rule 410(b) because of its unique and special expertise and perspective on the questions of necessity, public interest, and environmental impact studies, alternative studies, and market, potential externalized costs, potential economic impacts and interests related to the subject matter of these proceedings:

a. The Section 16 of the Public Services Commission’s Organic Act requires by law, rule, or decisions of this Commission a consideration and determinations on the proposed Line 5 tunnel project and its inextricably connected tunnel pipeline regarding public necessity or need, the overall public interest, reasonable alternatives to the sting, location, routing, capacity, adjustments to capacity and pipelines, and the likely impacts on air, water, natural resources and/or the public trust in those resources, MEPA, MCL 324.1701 et seq; *Sate Highway Comm’n. v Vanderkloot; Buggs*; and the alternatives to the proposed project or conduct, *Id.*;

b. Moreover, the overarching framework involving the public interest in this proceeding directly involve and implicate the public trust principles, duties, rights and paramount interests of the State and public in the Straits of Mackinac, Lake Michigan and Lake Huron. *Obrecht v National Gypsum Co*, 361 Mich 399 (1960); *Glass v Goeckle*, 473 Mich 667 (2005); *Illinois Central R Rd v Illinois*, 146 U.S. 387 (1892);

c. As described above, for the past 6 years, FLOW has researched, analyzed, prepared and submitted more than a dozen reports, studies and comments on factual and legal information pertaining to the proposed Line 5 Tunnel and pipeline and the existing dual pipelines on matters of risks, geotechnical science, alternatives and necessity, worse case scenarios, and the overarching legal and public interests in the air, water, natural resources, public health and safety, economy, and public and private property, and the public trust in the Great Lakes;

d. As described above, FLOW, its supporters, consultants and special expertise in water, environment, risk assessment, logistic assessment, impact and alternative assessment, climate change and effects, and alternatives to conduct that adversely impacts the Great Lakes, and public trust law and principles in Michigan and the Great Lakes will provide useful and significant information to the Commission, and an important and unique perspective on the issues in the case; and

e. FLOW has also worked for years to advance policies through legislative, administrative, and legal briefs and arguments that would benefit the Commission and the public in these areas of expertise, experience, and special knowledge.

11. Based on the above, FLOW meets the test for permissive intervention, because FLOW will provide useful information to the Commission and a unique perspective on the issues. FLOW will bring significant expertise to bear in these proceedings. Its staff and witnesses have extensive knowledge and experience Commission proceedings and the subject matter of this case.

12. Alternatively, FLOW seeks permissive intervention pursuant to Section 1705(1) of the MEPA, MCL 324.1705(1), based on the allegations that the proposed conduct by Enbridge in these proceedings is likely to degrade, impair, or pollute the air, water, natural resource or the public trust in those resources. MEPA applies to these proceedings. *Buggs v Michigan Public Service Comm'n*; *Vanderkloot*; In the matter of the application of DTE Electric Company for approval

of its Integrated Resource Plan pursuant to MCL 460.6t and for other relief, *Case No. U-20471*, February 20, 2020, Order, p. 43

13. FLOW's request for permissive intervention will be limited to written briefs and pleadings regarding the Enbridge Application, evaluation of the evidence, law, and where appropriate participation in arguments to assist the Commission and the public in reaching the best, good faith decision possible in this case. As permissive intervenor, FLOW does not plan on presenting direct or rebuttal testimony or exercising cross examination, as will the parties and intervenors of right. Rather, FLOW will concentrate its submissions, briefs, and arguments on the questions before the Commission under Act 16, the MEPA and applicable duties and standards involving impairment and alternatives, and as described above, the overarching framework and public interest in the Great Lakes that is unique to these proceedings; further, because of its extensive involvement and understanding of all aspects of the proposed Line 5, FLOW plans on submitting an analysis and legal arguments on the declaratory rulings requested by Enbridge and described in the Commission's Order, U-20763-0022, April 22, 2020.

14. This petition for permissive intervention is timely.

15. No other party adequately represents the long-standing work and interests of FLOW and its supporters in the subject matter of this proceeding.

16. FLOW requests that all notices and pleadings be served on:

James M. Olson
For Love of Water (FLOW)
153 ½ East Front St.
Suite 203C
Traverse City, MI 49684; and
jim@flowforwater.org

Nayt Boyt
For Love Water (FLOW)
153 ½ East Front Street
Suite 203C
Traverse City, Michigan 49684
nayt@flowforwater.org

For the reasons stated above, FLOW respectfully requests that the Commission grant this petition for permissive intervene and treat it as a party to this proceeding subject to the condition that as permissive intervenor it will not submit direct testimony or exhibits into evidence or exercise cross examination, but will evaluate the evidence, file legal briefs, factual information, and factual and legal arguments on the questions presented in these proceedings, and participate in oral arguments when necessary.

Date: May 1, 2020

By: _____
James M. Olson (P18485)
Legal Counsel and Advisor
For Love of Water
153 ½ East Front St.
Traverse City, MI 49684
Phone: 231-944-1568

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the 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

U-20763

ALJ _____

AFFIDAVIT OF ELIZABETH KIRKWOOD

1. I am the Chief Executive Officer of For Love of Water (FLOW).
2. I have personal knowledge of the allegations in FLOW's Petition for Permissive Intervene in this case.
3. The factual allegations in the petition concerning FLOW and its supporters are true and accurate to the best of my knowledge, information and belief.
4. If called as a witness, I could competently testify to the facts in the Petition for Permissive Intervention.

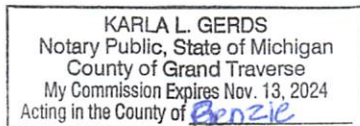


Date: May 1, 2020

Elizabeth R. Kirkwood

STATE OF MICHIGAN
COUNTY OF BENZIE

Subscribed to and sworn before me via remote notarization on this 1st day of May, 2020,
by Elizabeth R. Kirkwood.



A handwritten signature in blue ink that reads "Karla L. Gerds". The signature is written over a horizontal line.

Karla L. Gerds, Notary Public
Grand Traverse County, Michigan
Acting in Benzie County
My commission expires: November 13, 2024
Notarized using electronic remote technology.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the 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

U-20763

PROOF OF SERVICE

On the date below, an electronic copy of **Appearance of James M. Olson on behalf of For Love of Water (FLOW), and Petition for Permissive Intervention by For Love of Water (FLOW)** were served on the following:

Name/Party	E-mail Address
Counsel for Enbridge Energy, Limited Partnership. Michael S. Ashton Shaina Reed	mashton@fraserlawfirm.com sreed@fraserlawfirm.com
Counsel for MPSC Staff Spencer A. Sattler Benjamin J. Holwerda Nicholas Q. Taylor	sattlers@michigan.gov holwerdab@michigan.gov taylorn10@michigan.gov
Counsel for Michigan Environmental Council Christopher M. Bzdok Lydia Barbash-Riley	chris@envlaw.com lydia@envlaw.com
Counsel for Grand Traverse Band of Ottawa and Chippewa Indians Bill Rastetter Christopher M. Bzdok Lydia Barbash-Riley	bill@envlaw.com chris@envlaw.com lydia@envlaw.com
Counsel for Environment Law & Policy Center Margrethe Kearney	mkearney@elpc.org

[SIGNATURE PAGE BELOW]

The statements above are true to the best of my knowledge, information and belief.

FOR LOVE OF WATER
Counsel for FLOW

Date: May 1, 2020

By: _____
Karla Gerds,
Legal Assistant to James Olson
420 E. Front St.
Traverse City, MI 49686
Phone: 231/946-0044
Email: karla@envlaw.com