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**IN THE 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,

v.

ENBRIDGE ENERGY COMPANY,
INC., and ENBRIDGE ENERGY, L.P.,

Defendants.

Case No. 3:19-cv-00602

Hon. William M. Conley

ENBRIDGE ENERGY, L.P.,
ENBRIDGE ENERGY COMPANY,
INC.,

Counter-Plaintiffs,

v.

BAD RIVER BAND OF THE LAKE
SUPERIOR TRIBE OF CHIPPEWA
INDIANS OF THE BAD RIVER
RESERVATION and NAOMI
TILLISON, in her official capacity,

Counter-Defendants.

STATEMENT OF INTEREST OF THE UNITED STATES

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The United States respectfully submits this Statement of Interest, pursuant to 28 U.S.C. § 517, to support Defendants’ (collectively, “Enbridge”) request that this Court stay its injunction requiring Enbridge to cease operation of Line 5 on certain parcels within the Bad River Reservation on or before June 16, 2026. *See Amended Final Judgment*, ECF 689 ¶ 4 (June 29, 2023).

INTERESTS OF THE UNITED STATES

The United States has strong interests here as shown by recent briefs (collectively, “Statements of Interest”) filed by two Administrations: *Brief of the United States as Amicus Curiae Supporting Partial Reversal, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Co., Inc., et al.*, No. 23-2309, ECF 94 (7th Cir. Apr. 10, 2024) (Attachment 1); *Statement of Interest of the United States, Enbridge Energy, Ltd. P’Ship, et al. v. Whitmer, et al.*, No. 1:20-cv-01141, ECF 140 (W.D. Mich. Sept. 12, 2025) (Attachment 2).

In particular, the United States has a significant interest in promoting an “affordable and reliable domestic supply of energy,” which “is a fundamental requirement for the national and economic security of any nation.” *Declaring a National Energy Emergency*, Exec. Order No. 14,156, § 1, 90 Fed. Reg. 8433 (Jan. 20, 2025). A shutdown of an international oil pipeline, Line 5, with no alternative means to transport the same amount of energy products damages that interest.

This case also implicates significant interests of the United States in its conduct of foreign affairs. Line 5 is subject to a treaty between the United States and Canada. *See Agreement on Transit Pipelines*, Can.-U.S., Jan. 28, 1977, 28 U.S.T.

7449 (the “Transit Treaty”). The Transit Treaty prohibits certain authorities in either country from taking actions that would impede the transmission of hydrocarbons through a covered pipeline. *See id.* art. II(1). The United States has a compelling interest in complying with its obligations under the Transit Treaty. Accordingly, the United States has a vital stake in ensuring that courts properly consider whether their actions might expose the United States to liability for treaty violations.

Finally, the United States has a trust relationship with the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation (“Bad River Band” or “the Band”) and its members. An 1854 treaty between the United States and the Chippewas of Lake Superior (including the Band) established the Bad River Reservation. Beyond its interest in good relations with the Band, the United States has an obligation to honor the rights the Band secured through the treaty. The United States has a strong interest in the application of law to protect trust lands from trespass and to provide appropriate remedies for trespasses on Indian lands.

INTRODUCTION

For reasons stated below and in its Statements of Interest attached hereto, the United States agrees with Enbridge that this Court should stay its amended judgment compelling Enbridge to “cease operation of Line 5 on any parcel within the Band’s tribal territory on which [Enbridge] lack[s] a valid right of way on or before June 16, 2026.” *Amended Final Judgment*, ECF 689 ¶ 4 (June 29, 2023); *see also Enbridge’s Motions*, ECF 707 (Jan. 27, 2026).

First, Enbridge is likely to prevail, in part, on the merits of its appeal because

this Court should not have issued an injunction to cease operation of Line 5 without considering the possible effects of its order on the United States' international obligations under the Transit Treaty, the effects of a shutdown of the Line 5 pipeline, and other equitable considerations for crafting appropriate injunctive relief discussed below. A stay pending appeal would avoid the costs and harms associated with the impending shutdown of Line 5 while the appellate court reviews the matter.

Second, the public interest favors a stay. The United States has advanced vigorous policies to promote energy production, lower energy prices, and protect national security. The United States has also entered a treaty with Canada aimed at avoiding substantial disruptions to Line 5. A stay pending appeal would advance these interests because, if Line 5 ceases to operate in June 2026 without any alternative means to transport its energy products, this Court's injunction could disrupt the energy supply chain, increase domestic prices, and enhance the economic and political power and leverage of malign foreign actors worldwide. The United States also could be exposed to liability for significant damages if an arbitral panel found the United States in breach of its treaty obligations. Such outcomes conflict with the public interest.

The United States recognizes that this Court attempted to afford the market and Enbridge sufficient time to pursue an appeal and address the Court's injunction. But with the June 2026 deadline now approaching, and the Seventh Circuit having not yet resolved the appeal, the potential for significant harm is imminent. This Court has a renewed opportunity to accommodate these compelling public interests by granting a stay pending appeal, thereby avoiding potentially grave costs of error.

BACKGROUND

On June 16, 2023, this Court “conclude[d] that the Band is ultimately entitled to permanent injunctive relief on its trespass claim” and ordered Enbridge to “decommission[] Line 5 on the 12 affected parcels” of land owned by the Band. *Opinion and Order*, ECF 684 at 50–52. In its opinion, this Court stated that it “is wary of permanently shutting down [Line 5] without providing adequate time for market adjustments, and hopefully, even for Enbridge to complete a proposed reroute of Line 5.” *Id.* at 51. The Court thus gave Enbridge “three years to complete a reroute.” Three years, this Court estimated, would “give the public and other affected market players time to adjust to a permanent closure of Line 5.” *Id.* Three years would also afford “Enbridge sufficient time to appeal this [C]ourt’s injunctive order.” *Id.* at 51–52.

Three years proved insufficient. As Enbridge explains, it has not completed a Line 5 reroute and there are no other means of transporting Line 5 products. *See Enbridge’s Memorandum in Support of Motions*, ECF 708 at 3–5 (“In fact, Enbridge’s Relocation Project is the *only* project in progress to preserve uninterrupted delivery of the product transported by Line 5.”). Nor has the Seventh Circuit issued an opinion despite having heard oral argument two years ago. *Id.* at 11.

In December 2023, the Seventh Circuit invited the United States to file an amicus brief “to address the effect of [the Transit Treaty] and any other issue that the United States believes to be material.” *Bad River Band*, No. 23-2309, ECF 77 (7th Cir. Dec. 12, 2023). The United States accepted, raising four arguments: (1) Enbridge is liable for trespass, (2) the Seventh Circuit should remand for this Court to

reconsider the equities and the public interest when fashioning injunctive relief to remedy the trespass, (3) this Court erred in its calculation of the disgorgement of Enbridge’s avoided costs, and (4) the Pipeline Safety Act displaces the Band’s common law nuisance claim. *See* Attachment 1. The Seventh Circuit has yet to resolve the appeal.

Meanwhile, after assuming office in January 2025, the President established robust policies to promote energy production, lower energy prices, and protect national security by issuing several key executive orders. *Declaring a National Energy Emergency*, for example, establishes a policy to promote an “affordable and reliable domestic supply of energy,” which “is a fundamental requirement for the national and economic security of any nation.” Exec. Order No. 14,156, § 1, 90 Fed. Reg. 8433. Similarly, *Unleashing American Energy* “protect[s] the United States’ economic and national security and military preparedness by ensuring that an abundant supply of reliable energy is readily accessible in every State and territory of the Nation.” Exec. Order No. 14154, § 2, 90 Fed. Reg. 8353, 8353 (Jan. 20, 2025). And *Protecting American Energy From State Overreach* affirms that a “reliable domestic energy supply is essential to the national and economic security of the United States, as well as our foreign policy.” Exec. Order No. 14260, § 1, 90 Fed. Reg. 15513, 15513 (Apr. 8, 2025).

In line with these policies, the United States recently filed a statement of interest in support of Line 5. *See* Attachment 2. In *Enbridge v. Michigan*, ---F. Supp. 3d ---, 2025 WL 3707609 (W.D. Mich.), state officials attempted to stop Enbridge from using a four-mile strip of land across the Straits of Mackinac. Their efforts would

have “shut down Line 5 entirely.” *Id.* at *1. To prevent a shut down—which the United States believes could disrupt energy supply chains, increase domestic prices, and enhance the economic and political power and leverage of malign foreign actors—the United States filed a statement of interest. *See* Attachment 2.

The statement describes the comprehensive set of federal safety standards for hazardous liquid pipeline facilities. *Id.* at 4–7 (explaining how the federal government regulates pipeline safety). The brief further explains how the Pipeline and Hazardous Materials Safety Administration protects pipeline safety, including safety efforts directed at Line 5. *Id.* at 8–10. Finally, the United States affirmed that Canada is a key partner in energy trade, with investment flowing in both directions across the border, and the continued operation of Line 5 plays a significant role in that partnership. *Id.* at 23. In light of these facts, the United States argued that efforts to shut down Line 5 are preempted by the Pipeline Safety Act, *id.* at 14–21, and by the foreign affairs doctrine, *id.* at 22–27.

The district court agreed. In December 2025, the court granted Enbridge’s motion for summary judgment on its preemption claims and enjoined Michigan from enforcing its shutdown order. 2025 WL 3707609, at *1. Adopting the reasoning of the United States, the court held that Michigan’s shut down efforts fall squarely within the reach of the Pipeline Safety Act’s preemption provision. *Id.* at *12–*17. The court also relied on the United States’ statement in holding that the foreign affairs doctrine preempts Michigan’s attempt to shut down Line 5. *See, e.g., id.* at *18 (emphasizing that the United States’ “foreign policy position embodied in the Transit Treaty”

supports the uninterrupted “flow of oil between” Canada and the United States); *id.* at *19 (holding that a shutdown “intrudes on the United States foreign relation power because it interferes with the United States’s relations with Canada”). Michigan has appealed. *See Enbridge Energy, L.P. et al. v. Whitmer, et al.*, No. 26-1021 (6th Cir.).

On January 27, 2026, Enbridge moved for a stay of this Court’s injunction requiring a shutdown by June 15, 2026, and, alternatively, an indicative ruling that the Court would modify this injunction to allow additional time for Enbridge to complete the reroute project. *See* ECF 707; ECF 708. In support, Enbridge relies on declarations detailing the serious economic damage and disruption to United States’ energy markets that would flow from an imminent shut down of Line 5 (in addition to financial harm to the company). *See* ECF 710, Hutchinson Decl. ¶ 5; ECF 711, Yu Decl. ¶¶ 5–8; ECF 712, Bishop Decl. ¶¶ 9–11; ECF 713, Grainger Decl. ¶¶ 4–6; ECF 714, Murray Decl. ¶¶ 4–5; ECF 716, Donley Decl. ¶¶ 6–10; ECF 717, Lucey Decl. ¶¶ 7–13; ECF 718, Podavin Decl. ¶¶ 3–8; ECF 720, O’Shaughnessy Decl. ¶ 5; ECF 721, Baker Decl. ¶¶ 3–4; ECF 724, Tetzlaff Decl. ¶¶ 6–8; ECF 728, Earnest Decl. ¶¶ 4–5; ECF 729, Rennie and Hunt Decl. ¶ 4. The declarations also describe Enbridge’s progress and investments to relocate Line 5 outside the Band’s territory. ECF 730, Schwartz Decl. ¶¶ 3–16. Finally, the declarations discuss Enbridge’s actions to reduce pipeline safety-related risks until the company completes the relocation project. ECF 726, LeBlanc Decl. ¶¶ 5–18; ECF 727, Duncan Decl., ¶¶ 3–15; ECF 730, Schwartz Decl., ¶¶ 17–24; ECF 731, Storlid Decl., ¶¶ 7–18; ECF 732, Weatherly Decl., ¶¶ 6–18.

ARGUMENT

The purpose of a stay is “to mitigate the damage that can be done during the interim period before a legal issue is finally resolved on its merits.” *In re A & F Enters., Inc. II*, 742 F.3d 763, 766 (7th Cir. 2014). “The goal is to minimize the costs of error.” *Id.* In deciding whether to issue a stay, courts consider, among other factors, “the likelihood the applicant will succeed on the merits of the appeal” and “the public interest.” *Common Cause Indiana v. Lawson*, 978 F.3d 1036, 1039 (7th Cir. 2020). The United States supports staying the injunction that requires Enbridge to cease operating Line 5 on June 16, 2026, ECF 689 ¶ 4, because Enbridge is likely to succeed, in part, on the merits of its appeal and the public interest supports a stay.

I. BECAUSE ENBRIDGE IS LIKELY TO SUCCEED, IN PART, ON THE MERITS OF ITS APPEAL, THIS COURT SHOULD GRANT A STAY

Enbridge is likely to succeed, in part, on the merits of its appeal because this Court failed to adequately assess all of the public interests in crafting its injunctive relief to remedy the trespass or to adequately weigh them in light of all the equities. The Seventh Circuit thus is likely to reverse this Court’s judgment ordering injunctive relief and remand for further consideration of the appropriate relief.

Devising the appropriate remedy for trespass in this case is not a simple matter. A court considering permanent injunctive relief for trespass must evaluate *all* equities. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311–13 (1982). Some equities involve the Band. The Band possesses treaty and sovereign rights, including to exclude or place conditions on Enbridge’s continued presence on tribal lands within the Reservation. Other equities implicate more parties. These unique equities are

associated with the potential removal or rerouting of an active international pipeline that falls under the Transit Treaty. The operation of that pipeline has implications for the United States' trade and diplomatic relationship with Canada, as well as economic and energy-supply ramifications.

In the United States' view, the injunctive remedy this Court fashioned in June 2023 should be reconsidered after weighing all the equities. At an earlier stage, this Court had considered additional equities, including whether it could craft injunctive relief that would not interfere with the Transit Treaty or Canada's concerns about the economic impact of an immediate shutdown. But the subsequent opinion omitted analysis of these important considerations. More precisely, as the United States explained in its Seventh Circuit amicus brief, this Court did not consider what it had described as the significant public policy implications that a shutdown order would have on the United States' trade and diplomatic relationship with and treaty obligations to Canada, or address in any detail the consequences for energy supply. This Court also did not specifically address whether its order could be considered a breach of the Transit Treaty, or the public interest in avoiding a dispute with Canada under the treaty. Nor did this Court address the public interests in the United States' diplomatic and trade relationship with Canada, as well as other important considerations. *See Attachment 1 at 22–39.*

In addition, Enbridge has provided declarations in support of its motions that illustrate the sort of detailed energy-related considerations this Court should have taken into account when issuing the shutdown injunction. The declarations, for

example, describe significant economic and energy harms if Line 5 operations cease soon. *See, e.g.*, ECF 710, Hutchinson Decl. ¶ 5 (outlining how a shutdown would create challenges for two refineries of Imperial Oil Limited, potentially leading to shortfalls of gasoline, diesel, and jet fuel supply in southern Ontario, with significant effects on consumers throughout the region); ECF 711, Yu Decl. ¶¶ 5–8 (delineating impacts of shutdown on refinery of Shell Canada Limited and a fractionization facility in which the company has an interest, as well as the potential for ripple effects through the company’s supply chain); ECF 712, Bishop Decl. ¶¶ 9–11 (discussing economic and employment impacts of shutdown from perspective of trade union for skilled construction workers); ECF 713, Grainger Decl. ¶¶ 4–6 (reaffirming opinion that shutdown of Line 5 would have far reaching and severely damaging effects, *e.g.*, shortages of heating fuels, fuel cost increases, industrial facility closings with associated economic and job losses in Wisconsin and Michigan, and job losses and economic harm in Ohio, Michigan, and Pennsylvania).¹ This Court should have weighed these kinds of equitable considerations when crafting injunctive relief for the trespass claim.

Because this Court did not consider (or failed to adequately consider) these and other vital equities in crafting its injunction, Enbridge has shown that it is likely to succeed in its appeal, at least insofar as obtaining a remand for further consideration of the appropriate relief on the trespass claim.

¹ *See also* ECF 714, Murray Decl. ¶¶ 4–5; ECF 716, Donley Decl. ¶¶ 6–10; ECF 717, Lucey Decl. ¶¶ 7–13; ECF 718, Podavin Decl. ¶¶ 3–8; ECF 728, Earnest Decl. ¶¶ 4–5; ECF 720, O’Shaughnessy Decl. ¶ 5; ECF 721, Baker Decl. ¶¶ 3–4; ECF 724, Tetzlaff Decl. ¶¶ 6–8; ECF 729, Rennie & Hunt Decl. ¶ 4.

II. THE PUBLIC INTEREST ALSO FAVORS A STAY

A stay is also in the public interest because it would avoid “damage” to the United States’ foreign relations and domestic policies if this Court compels Enbridge to cease operating Line 5 on June 16, 2026. *In re A & F Enters.*, 742 F.3d at 766.

The United States has adopted a foreign policy consistent with avoiding substantial disruptions to Line 5. *See* Attachment 2 at 25–27. To that end, the United States has agreed with Canada that “no public authority” of either country may “institute any measures,” except in limited circumstances, “which are intended to, or which would have the effect of” interfering “in any way” with Line 5’s transmission. Transit Treaty, art. II(1). The countries have further agreed that disputes over the treaty’s “interpretation, application or operation” be resolved through bilateral negotiations and, if necessary, international arbitration. Transit Treaty, art. IX(1)–(2).

Canada has invoked the treaty’s dispute resolution provisions to address its contention that a shutdown of Line 5 by this Court (or the Band) would violate the treaty. *See* Br. of Canada, *Bad River Band v. Enbridge*, No. 23-2309, ECF 20 at 6–7, at B at 2 (7th Cir. Sept. 18, 2023) (“Canada considers [this Court’s] shutdown order a violation of Canada’s substantive rights under the 1977 Treaty.”). The two countries are now engaged in negotiations before potential arbitration. *See* Transit Treaty art. IX(1), (2). These negotiations would be significantly complicated if this Court allows its injunction to take effect on June 16, 2026.

The United States also has a significant interest in avoiding a dispute with Canada over a potential Line 5 shutdown given its broader diplomatic and trade relationship with Canada. Canada claims that a shutdown of Line 5 would have a

devastating impact on parts of its economy. And if Enbridge must cease operating Line 5 by June 16, 2026, leading to the sort of economic harm Canada describes, then it is possible that the United States could be exposed to liability for significant damages if an arbitral panel found the United States in breach of its treaty obligations.

Beyond potential harm to its relationship with an important international partner, the United States' broader foreign policy goals would be diminished in the absence of a stay. As explained, the President issued a directive "to protect the United States' economic and national security and military preparedness by ensuring that an abundant supply of reliable energy is readily accessible in every State and territory of the Nation." *Unleashing American Energy*, 90 Fed. Reg. at 8353. A "reliable domestic energy supply is essential to the national and economic security of the United States, as well as our foreign policy." *Protecting American Energy From State Overreach*, Exec. Order No. 14260, § 1, 90 Fed. Reg. 15513, 15513 (Apr. 8, 2025). Ceasing Line 5 operations without a reroute or an alternative means to transport its energy products clashes with these foreign policy interests.

Domestic interests are also at stake. A shutdown of Line 5 could cause economic harm to energy markets, particularly in the upper Midwest. For example, as the United States explained in its 2024 statement of interest, natural gas liquids transported by Line 5 provide an estimated 55 percent of Michigan's propane supply, with the propane used to heat Michigan households. *See* Attachment 2 at 24. Shutting down Line 5 could disrupt the energy supply chain and increase domestic prices. *Id.* The declarations submitted by Enbridge, *see supra* at 9–10 & n.1, further articulate

the serious consequences of shutting down Line 5 in June 2026. And any shutdown would impede the United States’ interests in providing affordable energy for all. *See, e.g., Unleashing American Energy*, 90 Fed. Reg. at 8353 (describing how “high energy costs devastate American consumers by driving up the cost of transportation, heating, utilities, farming, and manufacturing, while weakening our national security”).

In sum, a stay pending appeal would avoid damage to the public interest while the Seventh Circuit completes its review of the matter.²

CONCLUSION

For the reasons stated above and in the attached Statements of Interest, this Court should grant a stay of its amended judgment requiring Enbridge to “cease operation of Line 5 on any parcel within the Band’s tribal territory on which [it] lack[s] a valid right of way on or before June 16, 2026.” ECF 689 ¶ 4.

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² Enbridge alternatively moves for an indicative ruling under Fed. Rule of Civ. Proc. 62.1. *See Enbridge’s Motions*, ECF 707; *Enbridge’s Memo. in Support of Motions*, ECF 708 at 23–26. The United States takes no position on the alternative request for relief to allow time for Enbridge to complete its reroute or to allow it to operate for five years. *See* ECF 708 at 23.

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CERTIFICATE OF SERVICE

I certify that on February 3, 2026, I served the foregoing document on all counsel of record using the Court's ECF system.

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