Nos. 23-2309 & 23-2467

In the
United States Court of Appeals
For the Seventh Circuit

Enbridge Energy Company, Inc. et al.,

Appellants/Cross-Appellees,

v.

Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation,

Appellee/Cross-Appellant.

On Appeal from the United States District Court
for the Western District of Wisconsin,
Case No. 19-cv-602-wmc (Conley, J.)

AMICUS BRIEF OF THE GOVERNMENT OF CANADA IN PARTIAL SUPPORT OF ENBRIDGE, SUPPORTING REVERSAL WITH RESPECT TO CERTAIN ASPECTS OF INJUNCTIVE RELIEF

Scott W. Hansen
Counsel of Record
Monica A. Mark
REINHART BOERNER VAN DEUREN S.C.
1000 N. Water St., Ste. 1700
Milwaukee, WI 53202
(414) 298-8123
shansen@reinhartlaw.com

Counsel for Government of Canada

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 23-2309 & 23-2467

Short Caption: Enbridge Energy v. Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Government of Canada as amicus curiae

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Reinhart Boerner Van Deuren s.c.

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Scott W. Hansen Date: September 18, 2023

Attorney's Printed Name: Scott W. Hansen

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

Address: Reinhart Boerner Van Deuren s.c.

1000 North Water Street, Suite 1700, Milwaukee, WI 53202

Phone Number: 414-298-1000 Fax Number: 414-298-8097

E-Mail Address: shansen@reinhartlaw.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 23-2309 & 23-2467

Short Caption: Enbridge Energy v. Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Government of Canada as amicus curiae

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Reinhart Boerner Van Deuren s.c.

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Monica A. Mark Date: September 18, 2023

Attorney's Printed Name: Monica A. Mark

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: Reinhart Boerner Van Deuren s.c.

22 East Mifflin Street, Suite 700, Madison, WI 53703

Phone Number: 608-229-2200 Fax Number: 608-229-2100

E-Mail Address: mmark@reinhartlaw.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Treaties

Legislative Materials

Other Authorities

INTRODUCTION

The Government of Canada ("Canada") respectfully submits this brief as amicus curiae to advise the Court regarding Canada's Treaty rights and interests implicated by this case and the effect of the 1977 *Agreement between the Government of the United States and the Government of Canada Concerning Transit Pipelines*, Jan. 28, 1977, 28 U.S.T. 7449 ("1977 Treaty") on the issues on appeal.[1] Canada supports the reversal of the injunctive relief ordered by the district court because it constitutes a violation of Canada's rights under Article II(1) of the 1977 Treaty, which generally prohibits any "public authority" within the United States from "impeding, diverting, redirecting or interfering with in any way the transmission of hydrocarbon" along a transit pipeline such as Line 5. Canada expresses no view on damages, contested issues of fact, or (except as specifically stated herein) issues of domestic U.S. law.

Canada's sole concern is with the injunctive relief ordered by the district court and sought on appeal.[2] Specifically, the district court's order

---

[1] All parties to this appeal have consented to the filing of this brief. Counsel for Canada certify that this brief was not written in whole or in part by counsel for any party, and no person or entity other than Canada and its counsel has contributed financially to the submission of this brief.

[2] The Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation ("the Band") has yet to file its brief on appeal. However, Canada anticipates that the Band will seek on appeal, as it did in

would compel a shutdown of the existing Line 5 pipeline across the Band's Reservation (1) permanently as of June 2026, and (2) potentially earlier depending on conditions at the Bad River meander ("the meander"). That shutdown injunction violates Canada's rights under the 1977 Treaty; it usurps the ongoing Treaty dispute resolution process between the Government of Canada and the Government of the United States (initiated by Canada on August 29, 2022); and it would cause grave harm to Canada and the broader public interest. The district court's shutdown injunction should be vacated, or at least substantially modified, to comply with the 1977 Treaty.

Canada is committed to the process of reconciliation and ensuring full protection for the rights of Indigenous peoples in Canada, including as recognized in the United Nations Declaration on the Rights of Indigenous Peoples, and respects the rights and interests of Indigenous peoples in the United States, including the Band's governance of its Reservation. To this end, Canada supports cooperative and expeditious efforts to re-route Line 5 away from the Band's Reservation. As the record reflects, there is a readily available means to remove Line 5 from the Reservation without interrupting the flow of hydrocarbons along Line 5. Enbridge Energy Company, Inc.

---

the district court, an order shutting down Line 5 earlier than the June 2026 shutdown deadline set by the district court. *See* A41, A122–24.

("Enbridge") has represented that it is ready to re-route the pipeline around the Reservation as soon as it receives the necessary permits from U.S. federal and state authorities, for which it has pending applications. A93–94. If (1) U.S. governmental authorities act expeditiously on the permitting applications; (2) Enbridge acts expeditiously to construct the re-routing as soon as it has the necessary approvals; and (3) Line 5 remains operational in the interim (subject to payment to the Band by Enbridge of whatever financial compensation is appropriate), Canada's Treaty rights and the Band's rights can each be protected, and the public interest will be well-served.

If no such resolution is forthcoming, this Court should ensure that no court-ordered shutdown occurs while the international dispute resolution process prescribed by the 1977 Treaty is ongoing.

STATEMENT OF INTEREST OF CANADA

The district court's shutdown order raises grave concerns for Canada, both from a legal and diplomatic standpoint and from an energy security and economic standpoint.

First, the order violates Canada's rights under the 1977 Treaty, which is an important element of the historic framework upon which the U.S.-Canada relationship has been successfully managed for generations.

The 1977 Treaty is one of many bilateral agreements between the United States and Canada that address their mutual vital interests in continental security, energy security, and economic and environmental cooperation along the longest national land border in the world.[3] Through formal and informal diplomatic processes and agreements at the national government level, the two close allies have worked together for over a century to secure their common security and prosperity while managing their shared resources and protecting their shared environment. Cooperation at the national level between the United States and Canada has created a successful, integrated regime to protect navigation and the environment in the shared waters of the Great Lakes;[4] it created the NORAD system for the

[3] There are over 200 bilateral treaties in force between the U.S. and Canada. *See* U.S. Dep't of State, *Treaties in Force: A List of Treaties and Other International Agreements in Force on January 1, 2020* at 60 (2020), https://www.state.gov/wp-content/uploads/2020/08/TIF-2020-Full-website-view.pdf; U.S. Dep't of State, *Treaties in Force Supplemental List of Treaties and Other International Agreements* at 8 (2023), https://www.state.gov/wp-content/uploads/2023/06/TIF-Supplement-Report-2023.pdf.

[4] *See* Treaty Between the United States and Great Britain Relating to Boundary Waters between the United States and Canada, Jan. 11, 1909, 36 Stat. 2449 (the "Boundary Waters Treaty"); Great Lakes Water Quality Protocol of 2012, Sept. 7, 2012, 36 U.S.T. 1383. The 1909 Boundary Waters Treaty stipulates that water levels and flows in the boundary waters must not be altered without the approval of the responsible government and the International Joint Commission. The Great Lakes Water Quality Protocol is the current iteration of an agreement between the United States and Canada first entered into in 1972 to act jointly to restore and maintain the chemical, physical and biological integrity of the waters of the Great Lakes.

joint air defense protection of North America; and it led to the North American Free Trade Agreement and its successor, the Canada-United States-Mexico Agreement, as well as the side-letter on energy entered into by the two nations in conjunction with that Agreement, in which they mutually committed "to promote North American energy cooperation, including with respect to energy security and efficiency, standards, joint analysis, and the development of common approaches."[5]

The 1977 Treaty is a key element of the joint energy security framework. While it is fully reciprocal, its initial impetus was to enhance U.S. energy security by securing the United States' ability to transport hydrocarbon products from Alaska through Canada to the lower 48 U.S. states.[6] Such cooperation remains critically important to North American energy security; a recent American Petroleum Institute study explains that the close integration of U.S. and Canadian oil and refining markets protects both nations from significant risks including over-reliance on OPEC

[5] Letter from Ambassador Robert E. Lighthizer to The Honorable Chrystia Freeland, Minister of Foreign Affairs (Nov. 30, 2018), https://www.international.gc.ca/trade-commerce/assets/pdfs/agreements-accords/cusma-aceum/letter-energy.pdf.

[6] *See* Senate Committee on Foreign Relations, Report on Agreement with Canada Concerning Transit Pipelines, S. Rep. No. 95-9, at 2 (1977).

suppliers.[7] Over 70 pipelines and over 30 electricity transmission lines cross the border, with essential energy moving back and forth unhindered. The 21 pipelines that flow from the United States to Canada make Canada the largest market for U.S. crude oil exports and transport almost all of Canada's natural gas imports. It is essential to the continued success of the relationship that both countries can trust that their reciprocal international legal commitments will be fully honored and implemented. It is also essential that any treaty issues be resolved between the treaty Parties, rather than by domestic courts.

The 1977 Treaty specifically provides that disputes regarding its "interpretation, application, or operation" shall be resolved at the international level between the two national governments, first by negotiation, then, as necessary, by international arbitration. 1977 Treaty, art. IX. As elaborated below, Canada considers the district court's shutdown order a violation of Canada's substantive rights under the 1977 Treaty. The Executive Branch of the United States Government has not stated a public view on the matter. Accordingly, Canada formally invoked the Article IX dispute resolution process at an early stage of this litigation, on August 29,

[7] *See* ICF Resources L.L.C., *U.S.-Canada Cross-Border Petroleum Trade: An Assessment of Energy Security and Economic Benefits* (2021), https://www.api.org/-/media/Files/News/2021/04/ICF_Cross-Border_Analysis_Final.pdf.

2022, *see* Attachment A, and publicly re-asserted its position under the Treaty after the Band sought a more immediate shutdown of Line 5, *see* Attachment B.

The Article IX(1) dispute resolution process is ongoing. Canada is pursuing it diligently, but such international dispute resolution processes do not proceed on a fixed schedule, and it is not currently possible to identify a date by which it will conclude in either an amicable resolution or binding arbitration.[8] While Canada would welcome a resolution that ensures the uninterrupted flow of hydrocarbons along Line 5 (with or without a timely re-route) and thereby moots the Treaty dispute, a central concern of Canada is that this litigation not usurp or undermine the ongoing international dispute resolution process prescribed by the 1977 Treaty.

Second, Line 5 is vitally important to Canada's energy security and economic prosperity.[9] Since 1953, Canada has relied on Line 5 to transport

---

[8] Following Canada's invocation of the Article IX(1) dispute resolution process, two formal negotiating sessions have taken place to date (in November 2022 and April 2023). Canada anticipates further negotiation sessions in the near future.

[9] Canada focuses here on Canadian interests, but Line 5 is also an important source of fuel for businesses and consumers in U.S. states including Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin. A Line 5 shutdown is estimated to cost these States and others approximately $ 23.7 billion over 5 years due to loss of production at area refineries. Consumer Energy Alliance, *Enbridge Line 5 | Shutdown Impacts on Transportation Fuel*, (2022), https://consumerenergyalliance.org/cms/wp-

vital fuels from producers in western Canada to users in central Canada. Line 5 currently transports up to 540,000 barrels per day of predominantly western Canadian hydrocarbons (natural gas liquids ("NGLs") and oil) to refineries in central Canada and the northern United States. Toronto Pearson International Airport, Canada's largest airport, relies heavily on oil from Line 5 for its jet fuel supplies. Line 5 supplies a large part of both Quebec's crude oil needs and the feedstock used by Ontario's refineries to make gasoline and other fuels. Line 5 is also the main source of NGLs to produce propane for the entire Great Lakes region.

In western Canada (Alberta and Saskatchewan), the loss of Line 5 would have a devastating impact on the economy. In the context of a pipeline system already operating at capacity, it would displace up to 400,000 barrels per day of oil originating from Alberta and Saskatchewan and approximately 80,000 barrels per day of NGLs. Line 5 is the only pipeline that can deliver NGLs to a specialized facility in Sarnia, Ontario, which is the main source of propane used by households and industry in Ontario, Quebec, Michigan, and the Great Lakes region. Sarnia's refining and petrochemical complex employs more than 4,900 people and indirectly generates an additional 23,500 jobs,

---

content/uploads/2022/02/CEA-Line-5-Shutdown-Impacts-on-Transportation-Fuel.pdf ("*CEA Report*").

which may be impacted by a shutdown of Line 5.[10] North America's integrated rail system, already subject to seasonal reliability constraints in the peak months and disruptions, lacks capacity to handle such a volume, and even if it did, diversion to oil-by-rail would significantly increase costs. The shutdown would cause massive revenue losses and potentially significant job losses in the energy sector in Alberta and Saskatchewan, while at the same time severely disrupting the supply and increasing the price of fuel across Quebec and Ontario.

The district court downplayed the likely economic impacts of a compelled shutdown based on its view that during the three-year period before its permanent shutdown order would become effective, the market would adapt. A97, A123. Respectfully, Canada considers the court's economic prediction speculative and unduly optimistic. Markets rarely adapt swiftly and efficiently under conditions of grave uncertainty. The district court's order leaves market participants highly uncertain as to whether, in the intervening three years, the continuous flow of hydrocarbons through Line 5 will be preserved by this appeal, by a settlement between the parties, by an international dispute resolution between the United States and Canada,

[10] *See* Testimony of Ontario Energy Minister Bill Walker before the Special House of Commons Committee studying the Line 5 issue in 2021, https://www.ourcommons.ca/DocumentViewer/en/43-2/CAAM/meeting-6/evidence.

and/or by a timely diversion of the pipeline around the Band's Reservation, or, conversely, Line 5 may be shut down sooner pursuant to the shutdown protocol imposed by the district court as a nuisance remedy or pursuant to the Band's appeal.

Further, even with complete and certain information, the market could not adapt to the shutdown of Line 5 without grave harm to North American energy security and economic prosperity. Alternative existing pipeline routes are not viable and are already at or close to capacity; rail or other transportation modes do not have capacity to handle additional oil and NGL volumes; and alternative transportation modes would be much more expensive and carbon-intensive and potentially raise more environmental and safety concerns.[11] Accordingly, Canada believes that even with a certain three-year lead-time, the economic impacts of a shutdown would be severe, both for crude oil and NGLs producers in the west, and for downstream

[11] *See, e.g.*, *Line 5 shutdown could create a logistical scramble, reducing competitiveness of crude oil producers and refiners*, S&P Global (May 7, 2021), https://www.spglobal.com/commodityinsights/en/ci/research-analysis/line-5-shutdown-could-create-a-logistical-scramble-reduci.html; *Report: Enbridge Line 5 Pipeline Closure Impacts*, Hart Energy (June 27, 2019), https://www.hartenergy.com/exclusives/report-closure-enbridge-line-5-would-have-huge-impact-181010.

refineries and facilities in central Canada and the U.S. Midwest that produce refined products for industry and consumers.[12]

ARGUMENT

I. The Court Should Give Effect to the 1977 Treaty.

The 1977 Treaty represents a specific and reciprocal binding commitment the United States and Canada made to each other under international law not to impede the pipeline transit of hydrocarbon products from anywhere in Canada to anywhere else in Canada via the United States, or vice versa:

> No public authority in the territory of either Party shall institute any measures, other than those provided for in Article V, which are intended to, or which would have the effect of, impeding, diverting, redirecting or interfering with in any way the transmission of hydrocarbon in transit.

1977 Treaty, art. II(1). The protection the 1977 Treaty provides for binational infrastructure such as Line 5, which has played a vital role in Canada's economy since 1953, is of the utmost importance to Canada. Giving full and proper effect to the 1977 Treaty is necessary to uphold the United States' commitments under international law and to further shared U.S.-Canada public interests in energy security and cross-border cooperation.

[12] *See generally CEA Report*.

U.S. domestic courts, including this Court and the district courts, are under an obligation to give effect to the 1977 Treaty for several reasons. *First*, the 1977 Treaty is self-executing under U.S. law. The congressional record of its ratification makes that clear.[13] As such, the Treaty constitutes federal law that this Court can and should effectuate, like a federal statute. *See, e.g.*, *Whitney v. Robertson*, 124 U.S. 190, 194 (1888) ("By the constitution, a treaty is placed on the same footing, and made of like obligation, with an act of legislation."); *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 346–47 (2006) ("[W]here a treaty provides for a particular judicial remedy, there is no issue of intruding on the constitutional prerogatives of the States or the other federal branches. Courts must apply the remedy as a requirement of federal law."); *see also Iceland S.S. Co. v. U.S. Dep't of Army*, 201 F.3d 451, 458 (D.C. Cir. 2000) ("When interpreting a treaty or memorandum of understanding, we are guided by principles similar to those governing statutory interpretation.").

---

[13] *See* S. Rep. No. 95-9, at 83 (1977) (State Department Letter to Congress: "The agreement is self-executing upon its entry into force, and U.S. implementing legislation accordingly will not be required."). An uncontradicted State Department statement to Congress during the ratification process should be given effect in court. *See, e.g.*, *Cook v. United States,* 288 U.S. 102, 119 n.19 (1933) (relying on pre-ratification statement of Secretary of State to conclude treaty was self-executing); *United States v. Postal*, 589 F.2d 862, 881–83 (5th Cir. 1979) (relying on pre-ratification statements of State Department officials and U.S. negotiators to conclude treaty was not self-executing).

Second, even if that were not the case, it is a fundamental principle of U.S. – and Canadian – law that domestic laws are to be interpreted and applied in a manner consistent with treaty and other international law obligations insofar as ambiguity in domestic law or judicial discretion permits. *See, e.g.*, *Murray v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804) ("[A]n act of congress ought never to be construed to violate the law of nations if any other possible construction remains"); *B010 v. Canada (Citizenship and Immigration),* 2015 SCC 58, ¶ 48 (Can. 2015) (the presumption that domestic legislation is intended to conform to international obligations "is a feature of legal interpretation around the world," including in Canada).

Third, the Treaty itself makes clear that domestic courts are intended to be bound by it. Subject to narrow exceptions, the Treaty expressly proscribes interference with the uninterrupted flow of hydrocarbons in transit along international transit pipelines by any "public authority in the territory of either Party." 1977 Treaty, art. II(1). A U.S. federal court, exercising authority under the Constitution and laws of the United States, is plainly a "public authority in the territory" of the United States.[14] An order by a U.S. court halting the flow of hydrocarbons along Line 5 that is not

[14] This Court and the district court are, of course, located within the United States, and they exercise public authority – including the authority to issue injunctions with the force of U.S. law – under Article III of the U.S. Constitution, applicable U.S. federal statutes, and U.S. federal common law.

authorized under the Treaty directly contravenes the express undertakings the United States made to Canada under the Treaty.

The district court initially expressed the inclination to give effect to the 1977 Treaty by avoiding issuing a shutdown order that could violate it. *See* A41–43 ("[I]t is possible to craft injunctive relief that would not interfere with the [1977] Treaty"). But the court later dismissed the 1977 Treaty as "not even a thumb on my balance," R605:47, and ultimately issued a shutdown order without any analysis of its compatibility with the Treaty. A111, A122–24. Simply stated, the district court acted as if the 1977 Treaty did not exist.

That was a clear error of law. It is a fundamental principle that a U.S. court is obliged to give effect to a self-executing treaty that imposes limits on the actions of U.S. public authorities, including the courts themselves. *See, e.g.*, *Medellín v. Texas*, 552 U.S. 491, 504–05 (2008); *Cook*, 288 U.S. at 118–19 & n.19.

This Court has recognized a caveat to that principle:

> [I]ndividuals have no standing to challenge violations of international treaties in the absence of a protest by the sovereigns involved. Even where a treaty provides certain benefits for nationals of a particular state . . . it is traditionally held that any rights arising from such provisions are, under international law, those of states and . . . individual rights are only derivative through the states.

Matta-Ballesteros v. Henman, 896 F.2d 255, 259 (7th Cir. 1990) (quotations and citations omitted). But that caveat does not apply in this case: Canada

formally and publicly invoked the 1977 Treaty in 2022, long before the district court issued its final decision, specifically opposing any shutdown injunction in this case that could take effect before re-routing or a resolution under Article IX of the Treaty could occur. *See* Attachment A. Enbridge placed that formal "protest by the sovereign[] involved" on the record before the court. *See, e.g.*, A42 ("Disputes about the pipeline must, according to the treaty, be subject to international [dispute resolution], a procedure that Canada recently requested with respect to Line 5."). Canada's formal invocation of Article IX was ample to trigger the court's obligation to give effect to the 1977 Treaty; it is not required, and is often infeasible, for a foreign sovereign to formally appear in court proceedings in order to assert treaty rights that those proceedings may otherwise violate. *See, e.g.*, *United States v. Rauscher*, 119 U.S. 407, 430–31 (1886) (holding that rights under self-executing treaties are enforceable without treaty parties asserting them in court); *Matta-Ballesteros*, 896 F.2d at 259–60 (treating the absence of an out-of-court official protest by the treaty party as decisive).[15]

[15] A foreign sovereign is not required to formally intervene in court proceedings in order to assert its treaty rights. The principle involved is one of comity – a domestic court should not presume to enforce a foreign sovereign's treaty right if it does not want it enforced: "it is up to the offended nations to determine whether a violation of sovereign interests occurred and requires redress." *Matta-Ballesteros*, 896 F.2d at 259 (quoting *United States v. Zabaneh*, 837 F.2d 1249, 1261 (5th Cir. 1988)). Canada clearly made that

II. The Ultimate Resolution Of Treaty Issues Should Be Deferred To The Article IX Process.

While the district court plainly erred in ignoring the 1977 Treaty, there remains an issue as to how domestic courts should give it effect, given that (1) Article II(1) expressly restricts the actions of "public authorities" including domestic courts, but (2) Article IX assigns dispute resolution under the 1977 Treaty to an international negotiation and arbitration process, not domestic courts. Canada submits that, in order to give effect to both of these provisions, domestic courts should (1) defer to the Article IX process (when that process is properly invoked, as Canada did in 2022) for the ultimate, authoritative resolution of 1977 Treaty issues, and act accordingly once such a resolution is reached, and (2) ensure that in the interim, no actions are taken by domestic public authorities (including the courts themselves) that would risk being determined to violate the 1977 Treaty when the Article IX process concludes. That approach entails this Court giving some consideration to the merits of Canada's 1977 Treaty arguments; Canada does not suggest that a frivolous Treaty assertion should preclude the normal application of domestic law pending international dispute resolution. But once a colorable Treaty objection is raised by a Party to the 1977 Treaty who

---

determination when it invoked Article IX. The district court erred in ignoring it.

invokes the Article IX process, domestic courts should defer to the Article IX process to ultimately resolve the dispute, thereby giving effect to Article IX and avoiding undue judicial interference in the conduct of international relations.[16]

Below, Canada demonstrates that there is at least a substantial risk that under the district court's order (or a similar order after modification on appeal) Canada's rights under the 1977 Treaty will be violated. Accordingly, in order to give effect to Articles II(1) and IX of the Treaty, this Court should (1) vacate the injunctive relief ordered by the district court; and (2) preserve the rights of the parties to return to court, as necessary, to give effect to the outcome of the Article IX international dispute resolution process once it is resolved.

[16] Courts commonly consider the merits of a legal argument while avoiding ultimately resolving it in deference to a higher authority; that is what a federal court does whenever it is asked to stay its own decision pending appeal or certiorari to a higher court. However, the traditional consideration of likelihood of success on the merits in such contexts must be modified in the present context to avoid undue interference with international relations and the Article IX process, and to reflect the fact that the foreign sovereign asserting the claim is not a party obliged to present detailed merits arguments to the domestic court. So long as a colorable Treaty claim is asserted, the clear intent of Article IX that Treaty disputes be resolved at the international level should be honored, and U.S. courts should avoid creating or facilitating potential Treaty violations.

III. Canada Has At Least A Colorable Objection Under The 1977 Treaty, So Pending The Conclusion Of The Article IX Process (Or Re-Routing), There Should Be No Trespass-Based Court-Ordered Permanent Shutdown.

For the reasons explained above, this Court should not compel, or allow the district court to compel, a permanent shutdown of Line 5 on terms that entail a substantial risk of violating the United States' obligations under the 1977 Treaty, or of being inconsistent with a negotiated resolution of the international dispute between the two 1977 Treaty Parties under Article IX. Doing so would undermine and usurp the Article IX process and, more broadly, the U.S. Executive Branch's conduct of foreign relations.

Such a risk exists because there is at least a colorable claim that implementation of the district court's order requiring a permanent shutdown in 2026 based on the Band's trespass to land claims would violate Canada's rights under the 1977 Treaty. *First*, it is plain and undisputed that Line 5, which has, since 1953, transmitted hydrocarbons from western to central Canada via the United States, is a transit pipeline subject to Article II of the 1977 Treaty. *See* A41 ("As the Band concedes, Line 5 falls under a treaty between the two nations regarding pipeline transit."). Further, it is clear as a matter of plain language that the U.S. District Court which issued the injunction is a "public authority within the territory" of the United States,

within the meaning of Article II(1) of the Treaty.[17] And the shutdown order is plainly conduct that Article II(1) of the Treaty prohibits, unless one of the exceptions in the Treaty applies:

> institut[ing] any measures . . . which are intended to, or which would have the effect of, impeding, diverting,[18] redirecting or interfering with in any way the transmission of hydrocarbon in transit.

---

[17] The Article II(1) phrase, "public authorities within the territory," is strikingly broad, and contrasts with the narrower phrases, "appropriate governmental authorities having jurisdiction," and "appropriate regulatory authorities," in, respectively, Articles IV and V. *Cf. Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004) (invoking the usual rule that "when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.").

Insofar as the shutdown order is attributed to the denial of Enbridge's application to renew its pipeline easement across certain parcels of land within the Band's Reservation, under 25 U.S.C. § 177 that denial is formally the act of another "public authority within [U.S.] territory"– the U.S. Department of Interior – acting as fiduciary on behalf of the Band, which is itself also a sovereign "public authority within [U.S.] territory."

[18] Insofar as a public authority compels a diversion of a pipeline, Article II(1) could be implicated. That does not, however, preclude the proposal to re-route the pipeline around the Reservation. First, while prompted by the Band's objections, the re-routing was proposed by Enbridge, the pipeline owner and operator, not a U.S. "public authority." Second, as discussed in Section I above, comity requires that courts enforce international treaties only insofar as the sovereign holders of the treaty rights at issue want them enforced. Canada seeks to enforce the 1977 Treaty to achieve the goal stated in the Treaty Preamble: "to ensure the uninterrupted transmission by [Line 5] of hydrocarbons." Canada is content for that goal to be achieved either along Line 5's current route or with the aid of Enbridge's proposed re-route around the Band's Reservation.

Second, in Canada's view, there is no applicable Treaty exception. The Treaty includes one exception and one quasi-exception to the prohibition against impeding the flow of hydrocarbons along transit pipelines. Article II(1) is expressly subject to Article V(1), which provides that:

> In the event of an actual or threatened natural disaster, an operating emergency, or other demonstrable need temporarily to reduce or stop for safety or technical reasons the normal operation of a Transit Pipeline, the flow of hydrocarbons through such Transit Pipeline may be temporarily reduced or stopped in the interest of sound pipeline management and operational efficiency by or with the approval of the appropriate regulatory authorities of the Party in whose territory such disaster, emergency or other demonstrable need occurs.

On its face, that exception does not support the district court's imposition of a permanent shutdown of Line 5 as of June 2026 because (1) the district court's order is expressly based on the Band's claim of trespass to land, not on any "demonstrable need temporarily to reduce or stop for safety or technical reasons the normal operation of a Transit Pipeline," (2) the district court's order imposes a permanent shutdown, not the "temporary" shutdown authorized by Article V(1), and (3) the district court's order was not issued "by or with the approval of" the U.S. Pipeline and Hazardous Materials Safety Administration ("PHMSA"), which is the sole "appropriate regulatory agency" authorized to regulate pipeline safety in the United States, *see* 49 U.S.C. §§ 5103, 5125.

The other quasi-exception to the Article II(1) prohibition, Article IV, permits "just and reasonable" and non-discriminatory "regulations by the appropriate governmental authorities having jurisdiction" over international transit pipelines. It specifies that authorized "regulations" may address pipeline safety, construction and operation "standards," "environmental protection," financial and reporting regulations. 1977 Treaty, art. IV(1). Conspicuously absent from Article IV is any reference to "reduc[ing] or stop[ping]" hydrocarbon flow, as in Article V, or "impeding, diverting, redirecting or interfering with" that flow, as in Article II(1), and the kinds of regulation Article IV specifically authorizes assume the existence of an operating pipeline.

Accordingly, Canada's position is that the Treaty authorizes public authorities to completely shut down a pipeline only on a temporary basis and only in the extreme circumstances specified in Article V, that is to address a safety emergency, while authorizing reasonable, non-discriminatory regulations *short of shutdown* as specified in Article IV. Moreover, PHMSA, not the district court, would be the "appropriate governmental authorit[y] having jurisdiction" over Line 5 for regulatory purposes. And, again, the June 2026 shutdown aspect of the district court's order was expressly premised on the Band's trespass arguments – arguments about absolute property rights, not about reasonable and non-discriminatory regulations.

There is no trespass/property rights exception to the Treaty prohibition against a public authority, such as the district court, compelling the shutdown of an international transit pipeline. Canada and the United States plainly knew how to provide for exceptions, and did so in the Treaty. But, while they were no doubt aware that property owners could raise trespass claims against pipelines and that not all pipeline easements are perpetual, they decided not to provide for an exception for trespass claims.[19] That decision reflects the Treaty Parties' stated intent to pursue an international public policy favoring trans-border cooperation and energy security, notwithstanding policies that might be pursued by local "public authorities" and notwithstanding private property rights,[20] which can be vindicated by means of financial compensation while keeping important international

[19] Inferring that the omission of any trespass exception was deliberate is consistent with the well-established *expressio unius est exclusio alterius* principle of statutory interpretation. *See, e.g.*, *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 188 (1978).

[20] The Treaty Preamble reflects the Contracting Parties' agreement that transit pipelines are imbued with international public policy significance that should override domestic and private property concerns: "[M]easures to ensure the uninterrupted transmission by pipeline through the territory of one Party of hydrocarbons not originating in the territory of that Party, for delivery to the territory of the other Party, are the proper subject of an agreement between the two Governments."

pipelines in operation.[21] Accordingly, Canada considers the district court's order shutting Line 5 down as of June 2026 – or any similar permanent shutdown order – a violation of the 1977 Treaty.

That Treaty violation can be remedied while also respecting the Band's rights. While Canada takes no position on U.S. domestic law issues regarding trespass, Canada notes that the Court ordered trespass-based financial compensation to the Band. Further, Canada notes that Enbridge has proposed to re-route Line 5, addressing the Band's desire to remove the pipeline from its Reservation. An outcome which respects the rights and interests of all involved could be achieved by the expeditious permitting and construction of the re-route around the Reservation, while keeping the pipeline open and providing whatever compensation is appropriate to the Band in the interim. In that regard, Canada notes with concern the district court's prediction that Enbridge will not be able to obtain the necessary

[21] This case would be a poor candidate for a trespass exception. While difficult issues might arise under the Treaty in some instances involving new pipelines and new conflicts between pipelines and property rights, this is not the current scenario. Line 5 was one of a small number of transit pipelines in service at the time of, and specifically contemplated by, the Treaty. Line 5, in operation now for 70 years, runs for 642 miles, of which the Band claims trespass to 2.33 miles. The Treaty Parties knew where it ran, including across the Band's Reservation, and for many decades, the Band granted and renewed easements for it. Surely the Treaty was not intended to authorize the complete shutdown of the pipeline simply due to any of the landowners along the route changing their position on renewal of an easement.

permits within the next three years, or potentially longer. A123. Canada is hopeful that the U.S. Government will ensure a predictable and timely permitting process, consistent with the law, in order to reach an outcome that protects the rights and interests of all involved.

In the decision below, the district court simply ignored the Treaty and Canada's rights and interests. Despite predicting that the re-route would not be complete in three years, and without regard to the progress of re-route permitting process or the ongoing Article IX international dispute resolution process, the district court ordered the pipeline shut down as of June 2026. That failure to give effect to the Treaty, failure to weigh the Treaty and the interests it represents in an equitable remedial decision, and domestic judicial undermining of an ongoing international dispute resolution process, represents an error of law.

If it upholds the district court's trespass ruling, this Court should revise its remedy to allow room for the U.S. Government to meet its obligations and resolve this international dispute through the Article IX process and/or through completing permitting of the re-route before any shutdown takes effect. No shutdown injunction should be entered, or at least, no such injunction should be effective, until either (1) the Article IX process has concluded on terms that permit a court-ordered shutdown, or (2) Enbridge has obtained the requisite permits for re-routing around the Band's

Reservation and has had time thereafter to construct and bring into operation the re-route, such that there will be no interruption of the flow of hydrocarbons.

IV. Any Nuisance/Emergency/Environmentally Based Shutdown Order Must Comply With Article V.

In addition to ordering a permanent shutdown of Line 5 by June 2026 based on the Band's trespass claim, the district court ordered Enbridge to implement a temporary shutdown protocol based on the Band's nuisance claim, based on environmental concerns at the meander. While the court concluded that those environmental concerns did not justify compelling an immediate shutdown of Line 5, it ordered Enbridge to temporarily cease Line 5 operations if and when the proximity and flow rate of the Bad River close to the pipeline reach certain thresholds. A102, A108–10.

Canada strongly supports sound and responsible operation and regulation of pipelines to protect the environment, including the Great Lakes region and the lands of Indigenous peoples, and supports appropriate, science-based efforts to ensure the safety of Line 5. As noted in the Statement of Interest above, Canada and the United States have a long and successful history of working together to protect the environment under the Boundary Waters Treaty and other joint initiatives, and First Nations/tribes are important and valued partners in those efforts. Further, just, reasonable and

non-discriminatory environmental and safety regulation of international transit pipelines is expressly authorized by Article IV(1)(a) and (b) of the 1977 Treaty, and compelled temporary pipeline shutdowns are expressly authorized by Article V(1) "[i]n the event of an actual or threatened natural disaster, an operating emergency, or other demonstrable need temporarily to reduce or stop for safety or technical reasons the normal operation of a Transit Pipeline."

That said, if a mere reference to alleged environmental or safety concerns were sufficient to support a compelled shutdown, the 1977 Treaty would be rendered nugatory. Accordingly, Articles IV and V place important limits and conditions on the compulsory measures that can be imposed with respect to a transit pipeline in the name of safety or environmental protection.

As amicus curiae, Canada does not presume to opine on the details of the evidentiary record or to express a definite view on whether a nuisance exists at the meander. However, Canada is concerned that the court's remedy analysis with respect to nuisance, like its remedy analysis with respect to trespass, essentially ignores the 1977 Treaty. Canada urges this Court to

reverse or modify the district court's nuisance remedy as appropriate to ensure compliance with the 1977 Treaty.[22]

In particular, this Court should bear in mind the distinct functions of Articles IV and V. Article II(1) allows only one exception to its general prohibition of compelled shutdowns: Article V(1). Although it is not mentioned in Article II, Article IV(1) may be considered a quasi-exception to Article II(1) insofar as it expressly authorizes certain regulatory actions which might otherwise raise Article II concerns. But Article IV(1) does not authorize compelled shutdown orders. Whereas Articles II(1) and V expressly address, respectively, interruptions in "the transmission of hydrocarbon" or "the flow of hydrocarbons," Article IV merely authorizes "regulations by the appropriate governmental authorities" on grounds such as safety and environmental protection. If Article IV were (mis-)read as authorizing orders

[22] As explained in Section II above, Article IX reserves the ultimate determination of merits issues under the 1977 Treaty to the international dispute resolution process, not domestic courts. Canada acknowledges, however, that Article V contemplates an "emergency" scenario, in which domestic "appropriate regulatory authorities" may have to act without awaiting an Article IX determination. If the Article V criteria are followed properly, a dispute under Article IX is unlikely to arise. As Canada has stated publicly, Canada has no objection to "appropriate, science-based efforts to ensure the safety of the pipeline" based on an "independent and objective assessment" by "appropriate U.S. regulatory authorities," including, if necessary, a temporary shutdown, so long as the United States "compl[ies] with its obligations" under the 1977 Treaty, "including the expeditious restoration of normal pipeline operations." Attachment B.

compelling pipeline shutdowns in non-emergency situations, Article V's narrower and more specific authorization for temporary shutdowns in emergency situations would be superfluous.

Under Article V(1), unlike Article IV, a shutdown can be ordered, but only "[i]n the event of an actual or threatened natural disaster, an operating emergency, or other demonstrable need temporarily to reduce or stop for safety or technical reasons the normal operation of a Transit Pipeline," and only on a "temporary" basis and "by or with the approval of the appropriate regulatory authorities of the Party in whose territory such disaster, emergency or other demonstrable need occurs." The district court's order fails to meet that standard insofar as it lacks the approval of PHMSA, "the appropriate regulatory authority of" the United States with respect to pipeline safety.[23] Further, if and when a "demonstrable need" to shut Line 5 down is found with the approval of PHMSA, any shutdown order issued in reliance on Article V must be temporary, and followed by an "expeditious restoration of normal pipeline operations." 1977 Treaty, art. V(3). That

[23] Significantly, whereas Article II(1) generally prohibits interference in pipeline operations by any "public authority *in the territory*" of a Treaty Party, the Article V exception to that prohibition applies only in favor of "the appropriate regulatory authority *of*" that Party. Restricting Article V to actions taken by the appropriate federal regulatory authority ensures that each national government need only defend shutdowns it – rather than a court or a sub-national public authority – sanctions.

express Treaty obligation would require allowing appropriate remediation and safety measures to enable Line 5 to reopen expeditiously. And it complements the express prohibition in Article II(1) of "measures [with] the effect of . . . interfering with in any way the transmission of hydrocarbon in transit." Measures that block efforts to ensure pipeline safety and thereby precipitate or prolong an emergency that leads to a shutdown violate Article II(1), and measures that block the expeditious reopening of the pipeline in the event of an emergency shutdown for environmental reasons violate Article V(3).

As it stands, the district court's order neglects the requirements of the 1977 Treaty with respect to its injunctive remedy for nuisance as well as its injunctive remedy for trespass. This Court should vacate or modify the order accordingly.

CONCLUSION

This Court should vacate the district court's order, or at least modify it, to ensure that there will be no court-ordered permanent shutdown until either (1) the Article IX process concludes in a manner that permits such a shutdown, or (2) the proposed re-route of Line 5 around the Band's Reservation has received all necessary permitting approvals and Enbridge has had time to construct and bring into operation the re-routed pipeline segment. In addition, this Court should vacate or at least modify the district

court's order to ensure that there is no compelled temporary shutdown without full compliance with Article V of the 1977 Treaty.

September 18, 2023

Respectfully submitted,

/s/ Scott. W. Hansen
Scott W. Hansen
Counsel of Record
Monica A. Mark
REINHART BOERNER VAN DEUREN S.C.
1000 N. Water St., Ste. 1700
Milwaukee, WI 53202
(414) 298-8123
shansen@reinhartlaw.com

Counsel for Government of Canada

Certificate of Compliance

I certify that this brief complies with the word limit imposed by Circuit Rule 29 because it contains 6963 words, excluding material exempted by Federal Rule of Appellate Procedure 32(f).

I further certify that this brief complies with the type-face and type-style requires of Federal Rule of Appellate Procedure 32(a)(5–6) and Circuit Rule 32(b) because it has been prepared in a proportionally-spaced, 13-point Century Schoolbook typeface using Microsoft Word.

September 18, 2023

/s/ Scott. W. Hansen
Scott W. Hansen

Counsel for Government of Canada

APPENDIX TABLE OF CONTENTS

Page

Statement by Minister Joly on Line 5 transit pipeline

From: Global Affairs Canada

Statement

August 29, 2022 - Ottawa, Ontario - Global Affairs Canada

The Honourable Mélanie Joly, Minister of Foreign Affairs, issued the following statement:

“More than ever, Canada is firmly committed to ensuring its energy and economic security, while taking important steps to fight climate change and protect the environment for future generations.

“In recent months, Canada has raised its serious concerns regarding the possible shutting down of the Line 5 pipeline on the Bad River Band Reservation in northern Wisconsin. The economic and energy disruption and damage to Canada and the U.S. from a Line 5 shutdown would be widespread and significant. This would impact energy prices, such as propane for heating homes and the price of gas at the pump. At a time when global inflation is making it hard on families to make ends meet, these are unacceptable outcomes.

"The Government of Canada is also worried about the domino effects the shutdown would have on the jobs of thousands of Canadians working not only in the oil industry but in interconnected areas of our economy. The shutdown could have a major impact on a number of communities on both sides of the border that depend on the wellbeing of businesses along the supply chain.

"Today, Canada is formally invoking, for the second time in relation to the operation of Line 5, the dispute settlement provision of the 1977 Agreement between the Government of Canada and the Government of the United States of America Concerning Transit Pipelines. Similar to the situation in the Straits of Mackinac in Michigan, the segment of the Line 5 pipeline in Wisconsin falls under the provisions of the 1977 Agreement. This treaty ensures the uninterrupted transmission of hydrocarbons—in the case of Line 5, light crude oil and natural gas liquids—from one place in Canada to another, transiting through the United States.

"Canada strongly supports Enbridge's proposal to relocate this segment of Line 5 outside and around the Bad River Band Reservation.

"Canada respects the rights and interests of Indigenous peoples, such as the Bad River Band's governance of their territory as a U.S. Tribe. In the forthcoming negotiations with the United States under the treaty, Canada is committed to working constructively to find a solution that responds to the interests of communities, respects Canada's rights under the treaty and ensures the continued and safe supply of energy to central Canada.

"Line 5 not only helps provide energy that is essential for empowering a resilient Canadian economy, it also supplies energy to business owners and residents in the Midwestern United States, including Wisconsin. Canada and the United States share a vision for a sustainable and inclusive economic growth that strengthens the middle class, creates more opportunities for them, and ensures people have good jobs and careers on both sides of the

border. Both Canadians and Americans expect their governments to strengthen Canada-U.S. supply chain security and work to reinforce our deeply interconnected and mutually beneficial economic relationship.”

Contacts

Adrien Blanchard
Press Secretary
Office of the Minister of Foreign Affairs
Adrien.Blanchard@international.gc.ca

Media Relations Office
Global Affairs Canada
media@international.gc.ca
Follow us on Twitter: @CanadaFP
Like us on Facebook: Canada’s foreign policy - Global Affairs Canada

Search for related information by keyword: GV Government and Politics | Global Affairs Canada | Canada | United States | Canada and the world | general public | statements | Hon. Mélanie Joly

Date modified:
2022-08-29

Government of Canada / Gouvernement du Canada

Home

Government of Canada Statement on the 1977 Canada-U.S. Transit Pipelines Treaty as it relates to Line 5 on the Bad River Band Reservation in Wisconsin

May 16, 2023

Canada is extremely concerned by the efforts of the Bad River Band of Lake Superior Chippewa in Wisconsin to immediately and permanently shut down the segment of Line 5 that crosses the Band's Reservation.

Shutting down Line 5 will create significant economic disruption across the U.S. Mid-west, and in Alberta, Saskatchewan, Ontario and Quebec. Line 5 supplies six refineries in Ontario and Quebec, including the refinery and petrochemical complex in Sarnia. In the U.S., Line 5 supplies four refineries in Michigan, Ohio and Pennsylvania; and, a 2021 third-party study indicated a shutdown would threaten more than 33,000 U.S. jobs and jeopardize US$20 billion in economic activity.

The energy security of both Canada and the United States would be directly impacted by a Line 5 closure. At a time of heightened concern over energy security and supply, including during the energy transition, maintaining and protecting existing infrastructure should be a top priority. Canada has raised these concerns with the U.S. on numerous occasions.

Canada's legal rights under the 1977 Canada-United States Transit Pipelines Treaty will be directly impacted by a Line 5 closure. Canada is engaged in ongoing formal diplomatic negotiations on Line 5 pursuant to dispute settlement provisions in Article IX(1) of the 1977 Transit Pipelines Treaty. The most recent session took place in Washington, D.C. on April 14, 2023. Canada invoked the Treaty's dispute settlement provisions because actions to close Line 5 represent a violation of Canada's rights under the Treaty to an uninterrupted flow of hydrocarbons in transit.

Canada understands that the Bad River Band has sought an emergency injunction in U.S. District Court in Wisconsin to shutdown Line 5, citing riverbank erosion near the pipeline. Canada supports appropriate, science-based efforts to ensure the safety of the pipeline and believes that the appropriate U.S. regulatory authorities should conduct an independent and objective assessment of local conditions and safety measures that can be implemented before any shutdown is considered. If a shutdown were ordered because of this specific, temporary flood situation, Canada expects the United States to comply with its obligations under the 1977 Transit Pipelines Treaty, including the expeditious restoration of normal pipeline operations.

Canada respects the rights and interests of Indigenous peoples, including the Bad River Band's governance of their Reservation. Canada strongly supports the infrastructure solution that is currently undergoing state and federal permitting review, which would reroute Line 5 outside the Bad River Band Reservation. Once built, this would enable the eventual closure of the segment of Line 5 currently located inside the Bad River Band Reservation. This infrastructure solution will keep Line 5 operating, further enhance environmental protections, meet critical energy needs in both Canada and the U.S., and fulfill the Bad River Band's desire to remove the pipeline segment from its Reservation.

Embassy of Canada to the United States, Washington, D.C.

Date Modified:

2023-05-16

Certificate of Service

I hereby certify that I electronically filed the foregoing Amicus Brief of the Government of Canada and Appendix with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

September 18, 2023

/s/ Scott. W. Hansen
Scott W. Hansen

Counsel for Government of Canada