

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

May 13, 2020

Via Email to: mpscedockets@michigan.gov

Michigan Public Service Commission
7109 W. Saginaw St.
Lansing, MI 48917

Re: Case No. U-20763

Dear Sir/Madam:

Please find enclosed Comments of Attorney General Dana Nessel in Opposition to Request by Enbridge Energy, Limited Partnership for Declaratory Ruling.

Sincerely,

/s/ Robert P. Reichel

Robert P. Reichel
Assistant Attorney General
Environment, Natural Resources, and
Agriculture Division
(517) 335-7664

RPR:jg
Attachment

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.)
_____)

**COMMENTS BY ATTORNEY GENERAL DANA NESSEL IN OPPOSITION
TO REQUEST BY ENBRIDGE ENERGY, LIMITED PARTNERSHIP
FOR DECLARATORY RULING**

INTRODUCTION

Attorney General Dana Nessel submits these comments pursuant to the Commission's April 22, 2020 order inviting public comment on the request for a declaratory ruling by Enbridge Energy Limited Partnership (Enbridge) contained in Enbridge's April 17, 2020 application pursuant to 1929 PA 16; MCL 483.1 *et seq.* (Act 16) and Mich Admin Code, R 792.10447 (Rule 447), requesting approval to replace and relocate the segment of Line 5 crossing the Straits of Mackinac into a tunnel to be constructed beneath the Straits of Mackinac (Line 5 Project). As noted in the Commission's order, while seeking approval of the Project under Act 16 and Rule 447, in the alternative, Enbridge asserts, and asks the Commission to issue a declaratory ruling pursuant to Rule 448, that the requested approval is not necessary to construct the replacement and to relocate the pipeline segment to a

tunnel because the Commission's 1953 approval of the construction, operation, and maintenance of Line 5 between the Wisconsin and Canadian borders¹ embraces approval of the replacement of one approximate four-mile segment of Line 5.

The Commission should reject Enbridge's requested declaratory ruling for several reasons, which are briefly summarized here and stated in greater detail below.

First, the proposed Project is manifestly not, as Enbridge claims, mere "maintenance" of Line 5 as authorized in the Commission's 1953 order. On the contrary, the Project entails the location and construction of a new pipeline, in a new tunnel structure, at a location different from the existing pipelines covered and authorized by the 1953 order.²

Second, the plain language of Act 16 and Rule 447 unambiguously requires Commission approval of the Project. Under Act 16, no one subject to the Act, including Enbridge has the right to "locate" an oil pipeline within Michigan, except as authorized by and subject to the Act. MCL 483.1(2) [emphasis added]. And Rule 447(1) explicitly requires that anyone conducting oil pipeline operations "that wants

¹ March 31, 1953 order in Case No. D-3903-53.1. *See also*, Exhibit A-3 to Enbridge's application.

² Moreover, the 1953 order was issued to a different legal entity, Lakehead Pipe Line Company. It is not clear that the present applicant, Enbridge Energy Limited Partnership, one of several Enbridge entities variously involved in Line 5, is actually the legal successor to Lakehead and the authorization granted in the 1953 order. Before the Commission makes a decision on the request for declaratory ruling or application, it should require the applicant, Enbridge Energy Limited Partnership to document that it, rather than some other Enbridge related entity, is the legal successor entity to Lakehead Pipe Line Company and the current owner and operator of Line 5.

to construct facilities to transport crude oil... shall file an application with the commission..." Rule 447(1)(c) [emphasis added]. Here the Project entails both the location and construction of a new pipeline.

Third, Enbridge's assertion that "[t]he activity contemplated by Enbridge in this Application has never been considered 'proposed new construction or extension' of facilities under Rule 447 requiring an application" (Application, ¶ 41, p 16) is patently untrue. It is contradicted by Enbridge's own conduct and the Commission's disposition of applications by Enbridge for approval to replace and relocate other segments of Enbridge oil pipelines in Michigan. In the aftermath of the catastrophic release of crude oil from Enbridge's Line 6B in 2010³, Enbridge applied for and obtained Commission approval of a series of similar pipeline replacement projects under Act 16 and what is now Rule 447.⁴

Fourth, dispensing with review of the pending application for authorization of the Project under Act 16 would be inconsistent with the Commission's present legal obligation under Part 17 (Michigan Environmental Protection Act) of the Natural Resources and Environmental Protection Act, MCL 324.1701, *et seq.* (MEPA) to determine whether the proposed activity is likely to cause pollution, impairment or destruction of natural resources or the public trust therein, and if so, whether there

³ As detailed by the National Transportation Safety Board, that release was caused by Enbridge's organizational and operational failures. NTSB, *Accident Report: Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, Marshall Michigan, July 25, 2010* (NTSB Line 6B Report), at xiii, 84, 121; <https://www.nts.gov/investigations/AccidentReports/Reports/PAR1201.pdf>.

⁴ See, e.g. MPSC dockets in cases U-16838, U-16856, U-17020, U-17478.

is a feasible and prudent alternative. See *In re State Hwy Comm v Vanderkloot*, 392 Mich 159 (1974) and *Buggs v Michigan Public Service Commission*, Court of Appeals No. 315058, (2015); 2015 Mich App LEXIS 23* (unpublished opinion). Part 17 was enacted in 1970, and the Commission obviously made no such determination in connection with its 1953 order regarding Line 5.

Finally, as reflected in Enbridge's application, the Project is premised upon the enactment of 2018 PA 359 and various agreements, including the December 2018 Tunnel Agreement between Enbridge and the Mackinac Straits Corridor Authority. (Application pp 2, 12; Exhibit A-5 to Enbridge's Application.) The constitutionality of Act 359 and the validity of the related agreements, including the Tunnel Agreement, remains the subject of pending litigation. *Enbridge Energy, Limited Partnership, et al v State of Michigan, et al*, Court of Appeals No. 351366. Any action the Commission takes in this matter, whether on the declaratory ruling sought by Enbridge or on its application for approval under Act 16, should recognize the continuing legal uncertainty of the Project.

ARGUMENT

I. Enbridge's Project is not mere "maintenance" of Line 5 as authorized by the Commission's 1953 order.

As noted above, Enbridge's request for a declaratory ruling asserts that the Commission's 1953 order approving the construction, operation and maintenance of Line 5 "embraces" approval of its currently proposed pipeline in a tunnel Project (Application, ¶ 38) and that the Project is "no more than maintaining and

continuing the operation of Line 5...” as approved by the Commission in 1953.

(Application, ¶ 40.)

On the contrary, the new Project substantially differs from what the Commission approved in 1953. First, it includes construction of a new pipeline approximately four miles long. (Application, ¶ 17; Exhibit A-7.) Second, the Project entails the placement of the new pipeline within an entirely new tunnel structure beneath the lakebed. (*Id.*) Third, the Project locates the new pipeline at a new location, that differs both horizontally from the existing dual pipelines on the lakebed (See Application Exhibit A-4, Figures 2A and 2B), and vertically, i.e. up to 250 feet beneath the lakebed (See Application, ¶ 32.) In sum, under the Project, the location and operation of Line 5 at the Straits approved in the 1953 order do not, as Enbridge claims “remain unchanged.” (Application, ¶ 40.)⁵

II. The plain language of Act 16 and Rule 447 unambiguously requires Commission approval of the Project.

It is undisputed that Enbridge is subject to the Commission’s authority to regulate the transportation of crude oil and petroleum products under Act 16.

(Application, ¶ 37.) Act 16, MCL 483.1(2) provides in relevant part:

A person exercising or claiming the right to carry or transport crude oil or petroleum, or any of the products thereof ... by or through pipe line or lines, for hire, compensation or otherwise, or exercising or claiming the right to engage in the business of piping, transporting, or storing crude oil or petroleum, or any of the products thereof, within this state, **does not have or possess the right** to conduct or engage in the

⁵ In addition, while the 1953 order contemplated a maximum operational capacity of 300,000 barrels per day for Line 5 (See Application, Exhibit A-3, 1 p 6), Enbridge currently transports an average of 540,000 barrels per day. (Application, ¶13.)

business or operations, in whole or in part, or have or possess the right **to locate**, maintain, or operate **the necessary pipe lines**, fixtures, and equipment belonging to, or used in connection with that business ... within this state ... **except as authorized by and subject to this act**. [Emphasis added.]

Thus, Act 16 unambiguously requires Enbridge to apply for and obtain Commission approval to locate the new pipeline included in its Project.

And the plain language of Rule 447(1) likewise unambiguously requires Enbridge to submit an application for Commission approval under Act 16 where, as here, it proposes to construct a new pipeline to transport crude oil or petroleum products. Rule 447 provides in relevant part:

(1) An entity listed in this subrule **shall file an application** with the commission for the necessary authority to do the following:

(c) A corporation, association, or person conducting oil pipeline operations within the meaning of 1929 PA 16, MCL 483.1 to 483.9, that wants to construct facilities to transport crude oil or petroleum or any crude oil or petroleum products as a common carrier for which approval is required by statute.

(2) The application required in subrule (1) of this rule shall set forth, or by attached exhibits show, all of the following information:

(e) A full description of **the proposed new construction** or extension, including the manner in which it will be constructed. [Emphasis added.]

Since Enbridge's Project indisputably includes the construction of a new four-mile pipeline at a new location, it falls within the scope the approval requirements of both Act 16 and Rule 447.

III. Enbridge's claim that Rule 447 does not apply to its Project is rebutted by its own prior applications for Commission approval to replace and relocate segments of other oil pipelines in Michigan.

As noted above, Enbridge asserts that “[t]he activity contemplated by Enbridge in this Application has never been considered ‘proposed new construction or extension’ of facilities under Rule 447 requiring an application” (Application, ¶ 41, p 16.) But that claim is directly contradicted by its own conduct.

In 1968, Lakehead Pipe Line Company, Inc. submitted an application to the Commission to construct, operate and maintain a new oil pipeline in Michigan in Commission No. U-3225. See Order dated September 26, 1968 (copy attached as Exhibit 1 to these Comments). The Commission ultimately authorized the construction, operation and maintenance of that proposed pipeline which was designated Line 6B.⁶

After Enbridge's catastrophic release of oil from Line 6B near Marshall, Michigan in 2010, Enbridge filed a series of applications under Act 16 and the predecessor to Rule 447 seeking Commission authorization to replace and relocate nearby various segments of Line 6B. For example, in Case U-16856, Enbridge sought and obtained Commission approval under Act 16 and former Commission Rule 601 [which was subsequently re-codified as the current Rule 447] to construct

⁶ While the Commission's online archive of orders entered prior to 1990 does not contain a copy of a final order in Case U-3225, it is clear from Exhibit 1 that Lakehead requested that authorization, and that the Commission planned further action on the application. In any event, it is a matter of public knowledge, subject to Commission notice, that Line 6B was constructed, operated and maintained with Commission approval.

and operate replacements for three separate segments of Line 6B, each approximately five miles long. See U-16856 Order dated December 6, 2011. (Copy attached as Exhibit 2 to these Comments.) Enbridge applied for and obtained Commission approval of other projects to replace different segments of Line 6B.⁷

In each instance, Enbridge filed an application for Commission approval of the pipeline replacement projects under Act 16 and the predecessor of Rule 447, notwithstanding the Commission's prior approval of the construction, operation and maintenance of the original Line 6B pipeline that these projects partially replaced. Thus, Enbridge's claim that its analogous Project here to replace a portion of Line 5 is mere "maintenance" authorized by the 1953 order and is an activity that would "never" require a new Commission approval under Rule 447 is utterly without merit.

IV. Granting Enbridge's request for a declaratory ruling, bypassing the normal application and review process to locate and construct a new replacement pipeline under Act 16 and Rule 447, is inconsistent with the Commission's duty under the Michigan Environmental Protection Act to consider the environmental impact of the Project and the availability of feasible and prudent alternatives.

In addition to the reasons set forth above, the Commission should also deny Enbridge's requested declaratory ruling because of intervening changes to the law governing the Commission's actions since the original Line 5 order was issued in

⁷ Case No. 16838 See <https://adms.apps.lara.state.mi.us/Mpsc/ViewCommissionOrderDocument/9980> ; Case No. 17478 See <https://adms.apps.lara.state.mi.us/Mpsc/ViewCommissionOrderDocument/9980>

1953. The Michigan Environmental Protection Act, 1970 PA 127 (MEPA), recodified as MCL 324,1701, *et seq.* now imposes substantive environmental duties upon state agencies and commissions to consider the potential environmental impacts of proposed activities, the availability of feasible and prudent alternatives, and whether the proposed activity “*is consistent with the promotion of the public health, safety and welfare in light of the state’s paramount concern for the protection of its natural resources from pollution, impairment or destruction.*” *State Hwy Comm, supra* at 185 [emphasis in original,]

More recently, in *Buggs, supra*, the Court of Appeals vacated and remanded a Commission order approving the siting of a gas pipeline under Act 9, because the Commission failed to adequately consider the potential environmental impact of the project as required by MEPA and *State Hwy Comm*. The court held:

...under the decision in *State Hwy Comm*, [the Commission’s] duty includes an obligation to consider the environmental effect that the proposed pipeline would have. Namely, it had to consider whether the proposed project would impair the environment, whether there was a feasible and prudent alternative to the impairment, and whether the impairment was consistent with the promotion of the public health, safety, and welfare in light of the state’s paramount concern for the protection of its natural resources from pollution, impairment, or destruction. *State Hwy Comm*, 392 Mich at 185–186 (opinion by Williams, J.) *Id.* at 20.

And the Commission itself, in describing the legal standards it is to consider for pipeline siting proposals under Acts 9 and 16, has acknowledged that “[t]he

Commission is also required by law to determine if there is environmental impacts from the proposed project and whether those can be appropriately mitigated.”⁸

Since neither MEPA nor the caselaw applying it existed when the Commission issued its 1953 order authorizing Line 5, no such consideration of environmental impacts of its construction, operation and maintenance occurred in Case D-3903-53.1 or is documented in that order. While that is not surprising, it makes it particularly inappropriate to rely upon that decision, as Enbridge suggests in its request for declaratory ruling, to bypass the normal application process under Act 16 and Rule 447 with respect to the Project at issue in this case. The Commission may not lawfully disregard its current duty under MEPA and relevant caselaw to adequately consider the environmental impacts of the Project.

CONCLUSION

For all the foregoing reasons, Enbridge’s request for a declaratory ruling that the Project is already authorized by the Commission’s 1953 order should be denied. The Commission should instead proceed with a full and substantive review of Enbridge’s application for authorization of the Project under Act 16, Rule 447 and all other applicable law.

⁸ MPSC, Facility Siting https://www.michigan.gov/mpsc/0,9535,7-395-93309_93606_93615---,00.html.

Respectfully submitted,

Dana Nessel
Attorney General

/s/ Robert P. Reichel

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Dated: May 13, 2020

EXHIBIT 1

S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the petition of)
LAKEHEAD PIPE LINE COMPANY, INC.,)
concerning construction of an oil)
pipeline.)

Case No. U-3225

At a session of the Michigan Public Service Commission held at its offices in the city of Lansing, Michigan, on the 26th day of September, A. D. 1968.

PRESENT: Hon. Peter B. Spivak, Chairman
Hon. Willis F. Ward, Commissioner
Hon. William A. Boos, Jr., Commissioner

ORDER TERMINATING PUBLIC HEARING
AND REQUIRING FILINGS BY
LAKEHEAD PIPE LINE COMPANY, INC.

On August 26, 1968, Lakehead Pipe Line Company, Inc., filed a petition with this Commission pursuant to the requirements of Act 16, P.A. 1929, requesting authority to locate, maintain and operate a 30-inch common carrier oil pipeline, a portion of which will be within the state of Michigan. On September 4, 1968, the Commission issued a notice of a public hearing on this matter to be held on September 17, 1968.

The hearing was convened as noticed and appearances were entered by the petitioner, by the Commission staff, and by a number of intervenors, consisting of two public utilities and a number of landowners owning property on or near the route of the proposed pipeline. The public utilities limited their appearance to a request for notification by the petitioner when its pipeline construction would approach or cross their facilities.

Mr. Harry B. McAra appeared on behalf of his client Mr. Matt Lutz and requested an adjournment for 60 days to prepare for the case. He objected to the sufficiency of the notice in this matter in that neither he nor his client, Mr. Lutz, received a notice.

The Commission staff representative requested a recess to consult with the Assistant Attorney General assigned as counsel to the Commission. The hearing was reconvened and the Assistant Attorney General cited the provisions of Act 16, P.A. 1929 (MSA 22.1341 et seq), and indicated that in his opinion the Commission has no jurisdiction pursuant to such statute to determine whether the public convenience and necessity would be served by construction and operation of the proposed pipeline. The Assistant Attorney General further advised that determination of convenience and necessity in this instance would be found by the courts of the several counties to be traversed by the proposed pipeline pursuant

to Act 198 of the Public Acts of 1873, as amended (MSA 22.221).

A ruling was issued from the bench by Commissioner Ward providing for termination of the public hearing in this matter, but asserting the Commission's jurisdiction in this matter as same is prescribed by Act 16, P.A. 1929, so as not to dismiss the subject application. Commissioner Ward indicated his action was based on the Assistant Attorney General's advice that no action of any kind by the Commission in this case would have any effect on the rights of any landowners on whose property the proposed pipeline might be located. Commissioner Ward further ruled that future filings with the Commission pursuant to and required by Act 16, P.A. 1929, would not be the subject of public hearings, but would be handled on an ex parte basis.

The Commission has given careful consideration to this case and FINDS that:

- A. The Commission has jurisdiction in this matter pursuant to and limited to the provisions of Act 16, Public Acts of 1929.
- B. The public hearing in this matter should be terminated.
- C. In the future, filings before the Commission pursuant to and required by Act 16, P.A. 1929, will not be the subject of a public hearing.

THEREFORE, IT IS ORDERED that:

1. The Commission has jurisdiction in this matter, limited to the specific provisions of Act 16 of the Public Acts of 1929.
2. Lakehead Pipe Line Company, Inc., shall file its specific authorized acceptance of the provisions of Act 16, P.A. 1929.
3. Lakehead Pipe Line Company, Inc., shall file a map showing the route of its proposed 30-inch common carrier oil pipeline, the intended size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves and connections and appliances of all kinds used, or to be used on such pipeline.
4. The public hearing held on this matter on September 17, 1968 is hereby terminated.
5. In the future, filings before the Commission pursuant to and required by Act 16, P.A. 1929, will not be the subject of public hearings.

The Commission specifically reserves jurisdiction of the matters herein contained and the authority to issue such further

order or orders as the facts and circumstances may require.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Peter B. Spivak
Chairman

(S E A L)

/s/ Willis F. Ward
Commissioner

/s/ William A. Boos, Jr.
Commissioner

By the Commission and pursuant
to its action of Sept. 26, 1968.

/s/ Knight D. McKesson
Its Secretary

EXHIBIT 2

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of **ENBRIDGE**)
ENERGY, LIMITED PARTNERSHIP)
to replace, construct, and operate certain)
pipeline segments for the transportation of crude)
oil and petroleum in Cass, St. Joseph,)
and Calhoun counties, Michigan.)

Case No. U-16856

At the December 6, 2011 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Orjiakor N. Isiogu, Commissioner
Hon. Greg R. White, Commissioner

ORDER APPROVING SETTLEMENT AGREEMENT

On August 29, 2011, Enbridge Energy, Limited Partnership (Enbridge) filed an application, with supporting testimony and exhibits, requesting authority to construct, own and operate approximately 15 miles of new 30- or 36-inch diameter pipeline, to be installed to replace certain pipeline segments of its existing crude oil pipeline known as Line 6B¹ in the counties of Cass, St. Joseph and Calhoun, Michigan. The application sought replacement of three separate, noncontiguous pipeline segments, each approximately 5 miles long, and located immediately downstream of Enbridge's Niles Pump Station in Cass County, Mendon Pump Station in St. Joseph County, and

¹Line 6B originates at Griffith, Indiana, and traverses northwestern Indiana and southern Michigan, crosses the Canadian International Border at Marysville, Michigan, and terminates at Sarnia, Ontario.

Marshall Pump Station in Calhoun County. The application was filed pursuant to 1929 PA 16, MCL 483.1 *et seq.* (Act 16).

Enbridge published and mailed a notice of hearing regarding its application. On October 18, 2011 a prehearing conference was held before Administrative Law Judge Mark D. Eyster. No petitions to intervene were filed. Pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17207, statements were submitted by John and Lois Carlson and Dennis Moody. The Commission Staff (Staff) also participated in the proceeding.

On November 3, 2011, the Staff and Enbridge filed a settlement agreement resolving all issues in the case. In accordance with the terms of the settlement agreement, on November 14, 2011, Enbridge filed a Notice of Election stating it would use 36-inch diameter pipe for the project proposed in its application. On November 21, 2011, the Staff filed its acceptance of this election.

The parties agreed that the pipeline is subject to the requirements of Act 16 and the standards and requirements of the U.S. Department of Transportation, Pipeline Hazardous Materials Safety Administration, Office of Pipeline Safety set forth in 49 CFR 195. The parties further agreed that Enbridge will undertake commercially reasonable efforts to commence restoration activities on real property affected by the project within 6 months of substantial completion of project construction; and will substantially complete restoration within 12 months of substantial completion of project construction or as may otherwise be agreed to with individual affected landowners.

After a review of the settlement agreement, the Commission finds that it is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that:

A. The settlement agreement, attached as Exhibit A, is approved.

B. Enbridge Energy, Limited Partnership is authorized to construct and operate a pipeline, including related fixtures and equipment, for the purpose of transporting crude oil or petroleum in Calhoun, Cass, and St. Joseph counties, as proposed in its application filed on August 29, 2011 and subject to the requirements of 1929 PA 16, MCL 483.1 *et seq.*

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

John D. Quackenbush, Chairman

By its action of December 6, 2011.

Orjiakor N. Isiogu, Commissioner

Mary Jo Kunkle, Executive Secretary

Greg R. White, Commissioner

STATE OF MICHIGAN

THE MICHIGAN PUBLIC SERVICE COMMISSION

IN RE ENBRIDGE ENERGY, LIMITED)
 PARTNERSHIP)
)
 APPLICATION PURSUANT TO 1929 PA 16;)
 MCL 483.1 *et seq.* and Rule 601 of the)
 Michigan Public Service Commission's Rules of)
 Practice and Procedure, R 460.17601 to Replace,)
 Construct and Operate Certain Pipeline)
 Segments for the Transportation of Crude Oil)
 and Petroleum in Cass, St. Joseph and Calhoun)
 Counties, Michigan)
)

Case No. U-16856

SETTLEMENT AGREEMENT

As provided in Section 78 of the Administrative Procedures Act of 1969 ("APA"), as amended, MCL 24.278 and the Commission's Rules of Practice and Procedure, Rule 333, 1992 MR 3, R 460.17333, and as encouraged by the Commission policy towards settlement of contested issues, Enbridge Energy, Limited Partnership and Michigan Public Service Commission Staff (collectively referred to hereinafter as the "Parties") have resolved through settlement discussions the contested issues and have entered into the following settlement agreement:

RECITALS

1. On August 29, 2011, Enbridge Energy, Limited Partnership ("Enbridge") filed its Application requesting authority to construct, own and operate approximately 15 miles of new 30- or 36-inch diameter pipeline, all of which would be installed to replace certain pipeline segments of its existing crude oil pipeline known as Line 6B¹ in the counties of Cass, St. Joseph and Calhoun, Michigan. The Application sought replacement of three separate, noncontiguous pipeline segments, each being approximately 5 miles long and located immediately downstream

¹ Line 6B originates at Griffith, Indiana, and traverses northwestern Indiana and southern Michigan, crosses the Canadian International Border at Marysville, Michigan, and terminates at Sarnia, Ontario.

of the Enbridge Niles Pump Station in Cass County (hereafter referred to as "Segment No. 3"), the Mendon Pump Station in St. Joseph County (hereafter referred to as "Segment No. 4") and the Marshall Pump Station in Calhoun County (hereafter referred to as "Segment No. 5"). (Hereafter these three segments are collectively referred to as the "Project").

2. The Michigan Public Service Commission Staff ("Staff") is the only other party to this proceeding.

3. On August 29, 2011, Enbridge filed the written direct testimony of four witnesses. The testimony was served on Staff.

4. Pursuant to due notice, a prehearing conference on the Application was held on October 18, 2011 before Administrative Law Judge Mark Eyster substituting for Administrative Law Judge Thomas Maier.

5. Attached to this Settlement Agreement as Exhibit A are maps showing the route and location of the proposed replacement pipeline and appurtenant facilities. Also included in the Application and testimony is a description and engineering specifications concerning the construction, size and capacity of the proposed pipeline. Enbridge states in its Application that it accepts the requirements imposed by 1929 PA 16 for crude oil and petroleum pipelines.

6. In its Application Enbridge requested to replace the approximately 15 miles of pipe with new 30- or 36-inch diameter pipe. As part of this Settlement Agreement, Enbridge agrees to file a Notice of Election with the Commission by November 15, 2011 setting forth its election that it will use either new 30- or 36-inch diameter pipe in the Project. The Notice of Election will be filed with the Commission in this docket. The Staff will have 7 calendar days to review Enbridge's Notice of Election and submit a letter in this docket approving or rejecting Enbridge's election. If Staff rejects Enbridge's election, then the Settlement Agreement is void.

7. As part of the Settlement Agreement, Enbridge commits to undertaking commercially reasonable efforts, contingent upon then existing weather, safety, environmental, and permitting conditions, to:

(A) commence restoration activities on real property affected by the Project within six (6) months of substantial completion of project construction; and

(B) substantially complete restoration within twelve (12) months of substantial completion of project construction or as may otherwise be agreed to with individual affected landowners.

8. The Application and direct testimony filed by Enbridge demonstrates that Enbridge is experienced in the design, construction, installation, operation and maintenance of pipelines. The Application and the direct testimony set forth the design specifications of the replacement pipeline with the safety regulations and specifications set forth in 49 CFR Part 195 and demonstrating that the pipeline is designed and intended to be constructed so as to meet the requirements of these regulations. Enbridge also submitted direct testimony and a comprehensive environmental impact report demonstrating that the construction and operation of the proposed pipeline and related facilities will not result in any significant environmental impact.

9. Enbridge's Application and direct testimony explain that the Project is necessary and is in the public interest because it: (i) assures future reliable and safe deliveries of crude oil supply to the region; (ii) provides a cost-effective solution that addresses Line 6B's future integrity needs; (iii) minimizes impacts to landowners, local communities and the environment by reducing the number of future investigative integrity digs and repairs that would otherwise be needed on these segments of Line 6B; and (iv) provides a proactive solution to efficiently address the potential future transportation requirements of Line 6B's shippers in this regional area.

10. Enbridge agrees that the project is subject to the requirements of 1929 PA 16, as amended, MCL 483.1 *et seq.*, as well as the standards and requirements of the U.S. Department of Transportation, Pipeline Hazardous Materials Safety Administration, Office of Pipeline Safety.

11. Enbridge agrees that within 60 days after the completion of the construction of the Project, Enbridge will submit to the Commission "as built" maps.

12. The Staff hereby certifies to the Commission that, subject to the terms of this Settlement Agreement, the issuance of an Order approving the map, route and type of construction and authorizing the replacement construction and operation of the pipeline as proposed by Enbridge is just, reasonable and in the public interest.

13. Based on the factors and considerations set forth above, Staff certifies that the approval by the Commission of the Application would be just, reasonable and promote the public interest, will provide for an expeditious conclusion to this case, and will minimize the time and expense which the Commission and the parties would otherwise have to devote to this matter.

14. Jurisdiction exists pursuant to 1929 PA 16, as amended, MCL 483.1 *et seq.*; 1919 PA 419, as amended, MCL 460.51 *et seq.*; 1939 PA 3, as amended, MCL 460.1 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's rules of Practice and Procedure, R 460.17101 *et seq.*

15. This Settlement Agreement has been made for the sole and express purpose of reaching a compromise among the positions of the parties without prejudice to their respective rights to take different positions in other proceedings. All offers of settlement and discussions relating to this Settlement Agreement shall be governed by the provisions of MRE 408.

16. The Settlement Agreement is not severable. Each provision of the Settlement Agreement is dependent upon all other provisions. If the Commission rejects or modifies this Settlement Agreement or any provision of the Agreement, the Settlement Agreement shall be

withdrawn and shall not constitute any part of the record of this proceeding or be used for any other purpose.

17. The parties hereby waive the provisions of Section 81 of the Administrative Procedures Act, MCL 24.281.

18. The parties to this Settlement Agreement join in requesting the Commission to expeditiously issue an Order approving this Settlement Agreement, granting Enbridge's Application and providing Enbridge the authority to design, construct, install, test, operate, maintain, repair and own the replaced Segment Nos. 3, 4 and 5, and related appurtenances for the transportation of crude oil and petroleum.

MICHIGAN PUBLIC SERVICE COMMISSION
STAFF:

Dated: November 3, 2011

By: **Spencer Sattler**
Digitally signed by Spencer Sattler
DN: cn=Spencer Sattler, o=Public Service
Commission, ou=Assistant Attorney General,
email=sattlers@michigan.gov, c=US
Date: 2011.11.03 10:06:11 -0400

Spencer A. Sattler (P70524)
Assistant Attorney General
6545 Mercantile Way, Suite 15
Lansing, MI 48911

ENBRIDGE ENERGY, LIMITED PARTNERSHIP:

Dated: November 3, 2011

By: **Michael S. Ashton**
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Dunlap, P.C., ou=mashton@fraserlawfirm.com, c=US
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EXHIBIT A



END MP
543.37

START MP
538.13

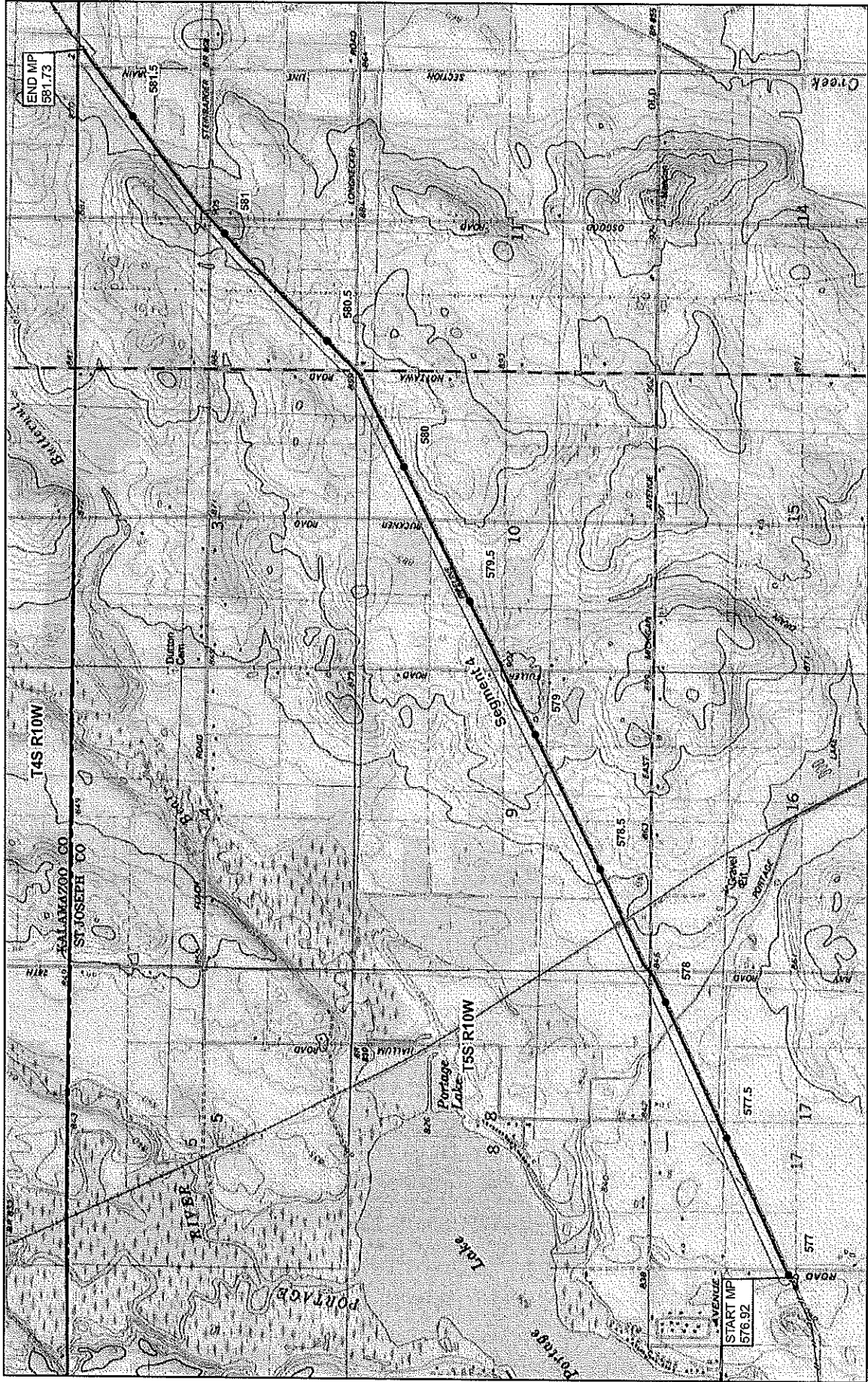
NO.	DESCRIPTION	DATE	BY

UNIVERSITY OF ILLINOIS
SURVEYING
PROJECT: 1100130010
DATE: 11/11/11

66 MILE POST
EXISTING 30' LINE 66
PROPOSED REPLACEMENT 3035' LINE 66

ENBRIDGE
ENERGY SERVICES
NATIONAL PIPELINES PROGRAM
NILES PIPE STATION
PROJECT 1100130010
DATE COUNTY, ILLINOIS
SCALE: 1" = 400'





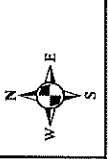
END MP
591.73

START MP
576.92

CONSTRUCTION LINE #2 2012 NATIONAL HIGHWAY SYSTEM NATIONAL HIGHWAY STATION ST. JOSEPH COUNTY, INDIANA REPORT A-100 DATES TO BE ADDED SCALE: 1" = 1000'	
DATE:	12/15/11
BY:	ENR
CHECKED BY:	ENR
APPROVED BY:	ENR
SCALE:	1" = 1000'

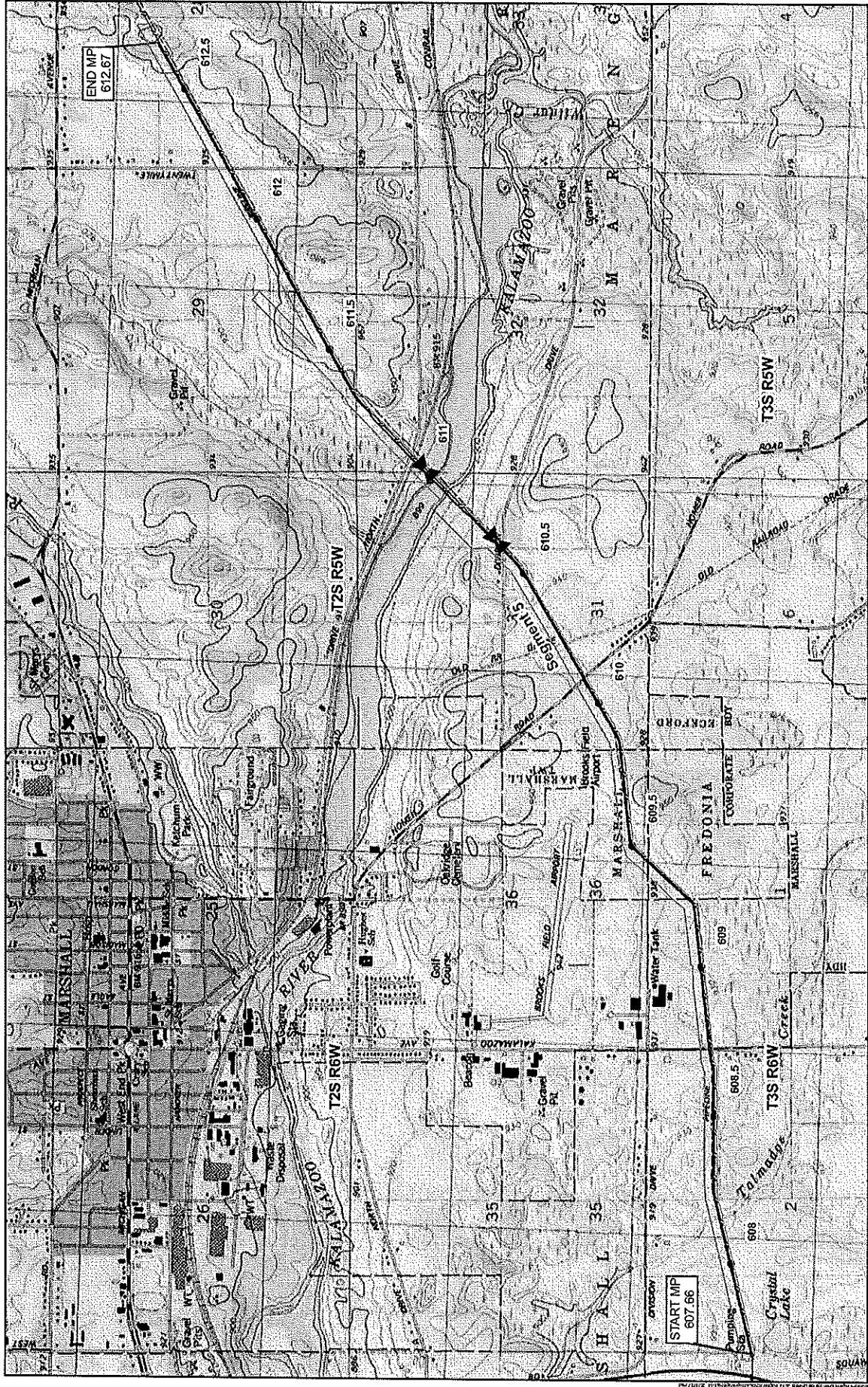
NO. 1	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 2	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 3	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 4	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 5	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 6	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 7	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 8	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 9	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 10	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 11	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 12	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 13	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 14	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 15	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 16	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 17	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 18	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 19	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 20	CONSTRUCTION LINE #2 2012	DATE:	12/15/11

88 MILE POST
 EXISTING 30' LINE 88
 PROPOSED REPLACEMENT 30' LINE 88



NO. 1	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 2	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 3	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 4	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 5	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 6	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 7	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 8	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 9	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 10	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 11	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 12	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 13	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 14	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 15	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 16	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 17	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 18	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 19	CONSTRUCTION LINE #2 2012	DATE:	12/15/11
NO. 20	CONSTRUCTION LINE #2 2012	DATE:	12/15/11





UNIVERSALITY 1000 UNIVERSITY DRIVE SUITE 100 CALHOUN COUNTY, GEORGIA 30501	
DATE:	10/1/04
SCALE:	1" = 1/4" AS SHOWN
PROJECT:	3036 LINE 68
DATE:	10/1/04
BY:	ENR
CHECKED BY:	ENR
APPROVED BY:	ENR

● 68 MILE POST
 ——— EXISTING 3036 LINE 68
 ——— PROPOSED REPLACEMENT 3036 LINE 68

□ SURVEY CORRIDOR
 ▲ EXISTING VALVE
 ▼ PROPOSED VALVE



68 MILE POST
 607.66
 612.67
 END MP