

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ENBRIDGE ENERGY, LIMITED
PARTNERSHIP, et al.,

Plaintiffs,

Case No. 1:20-cv-1141

v.

HON. JANET T. NEFF

GRETCHEN WHITMER, et al.,

Defendants.

STATE OF MICHIGAN, et al.,

Plaintiffs,

Case No. 1:20-cv-1142

v.

HON. JANET T. NEFF

ENBRIDGE ENERGY, LIMITED
PARTNERSHIP, et al.,

Defendants.

/

ORDER

On November 13, 2020, the State of Michigan issued a Notice of Revocation and Termination of Easement to revoke and terminate a 1953 Easement that allowed construction of the Straits Pipelines. That same day, the State of Michigan, Governor Gretchen Whitmer, and the Michigan Department of Natural Resources (collectively “the State Parties”) filed a Complaint in state court, seeking various declaratory judgments. On November 24, 2020, Enbridge Energy, Limited Partnership; Enbridge Energy Company, Inc.; and Enbridge Energy Partners, L.P.

(collectively “the Enbridge Parties”) filed a lawsuit in this Court, Case No. 1:20-cv-1141, and removed the state court case here, Case No. 1:20-cv-1142.

This Court conducted a Pre-Motion Conference with counsel in these cases on February 17, 2021. In Case No. 1:20-cv-1141, the State Parties propose to file a motion to dismiss based on sovereign immunity and failure to state a claim (ECF No. 10). In Case No. 1:20-cv-1142, the Enbridge Parties propose to file a motion to dismiss for failure to state a claim (ECF No. 9), and the State Parties propose to file a motion to remand to state court for lack of subject matter jurisdiction (ECF No. 15). Having considered the parties’ written and oral submissions, the Court has determined, for the reasons stated on the record, to consider the motion to remand before turning to consider the issues of consolidating and/or dismissing these cases. Accordingly:

IT IS HEREBY ORDERED that the parties shall proceed with briefing the anticipated motion to remand in Case No. 1:20-cv-1142 (ECF No. 15) in accordance with the following schedule:

- (1) The State Parties’ Motion to Remand and Brief, limited to 30 pages, shall be served and a proof of service filed not later than March 17, 2021;
- (2) Any briefs from amici in support of the State Parties’ Motion to Remand, limited to no more than four amici briefs and limited to 15 pages each, shall be served and a proof of service filed within 14 days of the Motion;
- (3) The Enbridge Parties’ Response, limited to 30 pages, shall be served and a proof of service filed within 42 days of service of the Motion;
- (4) Any briefs from amici in support of the Enbridge Parties’ opposition to the motion to remand, limited to no more than four amici briefs and limited to 15 pages each, shall be served and a proof of service filed within 14 days of the Response;
- (5) The State Parties’ Reply, limited to 20 pages, shall be served and a proof of service filed within 35 days of service of the Response; and
- (6) The parties shall electronically file their respective motion papers as soon as the motion is fully briefed.

The parties shall otherwise adhere to the requirements for briefing and filing dispositive motions, as set forth in Judge Neff's Information and Guidelines for Civil Practice, available on the Court's website (www.miwd.uscourts.gov).

IT IS FURTHER ORDERED that the parties shall adhere to this Court's Local Civil Rule 10.9 when referencing a page of the record.

IT IS FURTHER ORDERED that the parties shall collaborate and file a Joint Exhibit Book to avoid duplicative exhibits.

IT IS FURTHER ORDERED that the State Parties shall provide chambers with one three-ring binder containing one-sided paper courtesy copies of the respective motion papers, including their motion to remand, the response, the reply, any amicus briefs, and any exhibits, after electronic filing (i.e., with the header) and properly tabbed. The binder shall be submitted directly to Judge Neff's chambers.

IT IS FURTHER ORDERED that the parties shall: (1) forthwith collaborate and identify the name of someone who could serve as a facilitative mediator or special master to guide the parties to a potential global resolution of their dispute; and (2) within twenty-eight (28) days of entry of this Order, file a Joint Notice advising the Court whether this matter may be submitted to facilitative mediation or a special master, including the name of the person whom the parties have jointly selected and an estimated time for completion.

IT IS FURTHER ORDERED that the requests for briefing schedules on the motions to dismiss (ECF No. 10, Case No. 1:20-cv-1141; ECF No. 9, Case No. 1:20-cv-1142) are DENIED without prejudice to renewing within fourteen days after the Court's resolution of the motion to remand. The parties shall include in their renewed Pre-Motion Conference Request(s), if any, a joint proposed briefing schedule, if applicable.

IT IS FURTHER ORDERED that the time for filing answers/responsive pleadings is extended until fourteen (14) days after a Pre-Motion Conference on the renewed request(s), or further order of the Court.

Dated: February 18, 2021

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge