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April 6, 2020

Via Email
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Liesel Eichler Clark
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Director, EGLE
525 West Allegan St.
Lansing, MI 48933

Re: Comments on UP Energy Task Force- Draft Committee
Recommendations—Part I—Propane Supply

Dear Director Clark and Committee Members:

Thank you for the opportunity to comment on the Draft Upper Peninsula Energy Task Force Committee Recommendations, Part I-Propane Supply. At the outset, I commend the Task Force members, staff, and the supporting contractor, Public Sector Consultants, for your prompt and extensive work in addressing the first stage of the task framed by Governor Whitmer's Executive Order 2019-14: focusing on alternative means to supply propane to Michigan, particularly the Upper Peninsula, in the event of supply changes.

As you well know, the people of Michigan have an urgent interest in this issue. The supporting technical report (Appendix III Analysis of Propane Supply Alternatives for Michigan) examines three scenarios involving potential disruptions of the propane supply in our state. Of most immediate concern is what the Report refers to as "Scenario 2," the shutdown of Enbridge's Line 5 pipelines that cross the Straits of Mackinac. See Report, p 7. As detailed in the Report, Line 5 currently transports natural gas liquids to two locations—Rapid River, Michigan and Sarnia, Ontario—where it is used to produce approximately 46 percent of the propane used in Michigan, and a significantly higher percentage of the propane now used in the Upper Peninsula. See Report, p 81.

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Michigan needs to quickly plan for the shutdown of Line 5 and the cost-effective replacement of propane supplies currently produced from the natural gas liquids it transports.

I have filed a lawsuit on behalf of the people of the State of Michigan against Enbridge in the Ingham County Circuit Court that alleges and asks the court to determine that Enbridge's continued operation of Line 5 at the Straits of Mackinac is unlawful and should be halted as soon as possible after a reasonable period of notice, to allow those affected to make orderly adjustments. *Dana Nessel, Attorney General v Enbridge Energy, Inc, et al* (Ingham Circuit No. 19-474-CE). As alleged in the Complaint, the continued operation of the Straits Pipelines presents an extraordinary and unreasonable risk to public rights, violates the public trust doctrine, constitutes a public nuisance and violates the Michigan Environmental Protection Act, MCL 324.1701, et seq. The case remains pending. While it is obviously not the charge of the UP Energy Task Force or the Report to adopt a position on these legal issues, the Task Force recommendations should take into account the potential for the litigation to result in the shutdown of Line 5 in the near future.

Second, apart from the pending litigation, the Straits Pipelines are subject to the continuing risk of damage and service interruption through an anchor strike. This risk is very real, as evidenced by the April 2018 incident in which an anchor was dragged across the lakebed striking both pipelines, as well previous incidents involving anchor damage to utility lines at the Straits. While Enbridge has proposed and is currently planning to construct a tunnel beneath the Straits to accommodate an eventual replacement for that segment of Line 5, the actual completion of that project is far from certain, and in any event, years away. In the meantime, the existing pipelines could be disabled at any time, cutting off the flow of natural gas liquids used to produce a substantial percentage of the propane consumed in Michigan.

Key findings in the Technical Report should inform the State's planning for the shutdown of Line 5

Before addressing the specific recommendations contained in the Committee's Draft Report, it is important to consider and highlight some key takeaways from the supporting Technical Report prepared by Public Sector Consultants. These are briefly outlined below.

- The UP is currently supplied with propane from multiple sources, only one of which depends on the operation of Line 5. The largest wholesale source of propane in the UP is currently the Plains Midstream facility in Rapid River, which extracts propane from natural gas liquids carried on Line 5 and provides a storage and distribution point, especially for the western UP. But propane is also supplied, especially in the eastern UP, from the NGL Supply Terminals facility in Kincheloe. It receives propane via direct rail car shipment from Edmonton, Alberta. In addition, some propane is supplied to the UP from other out-of-state sources including the Plains Midstream propane fractionator in Superior, Wisconsin. See Technical Report, pp 46, 50.
- The Lower Peninsula is currently supplied with propane from multiple sources, only one of which depends on the operation of Line 5. Line 5 delivers natural gas liquids to Sarnia, Ontario depropanizer facilities which produce propane that is then carried, via separate pipelines, to storage and distribution facilities in Marysville and St. Clair, Michigan. Other sources of supply include but are not limited to the Lambda Energy Resources natural gas processing plant in Kalkaska, Michigan, the Marathon Oil Company Detroit refinery, and sources in neighboring states. See Technical Report, pp 48, 60.
- The Technical Report “identified a number of robust and diverse alternative supply options for delivery to the Michigan market.” (Technical Report, p 7) The Report modeled in detail many alternative means of supplying propane under each of the scenarios and prioritized the alternatives that would likely be most cost-effective. As stated in the Summary:

These include sourcing from multiple supply hubs, with primary reliance on supply from Edmonton, Alberta, and Conway, Kansas, transported by rail, pipeline, and truck. Rail routes **from Edmonton to delivery sites in Michigan are the most cost-effective option, especially when propane is procured with a long-term focus on meeting demand throughout the year and using storage as needed to optimize price.** In addition to sourcing propane directly from a major supply hub like Edmonton, PSC found several propane storage terminals in neighboring states where shipments via various pipelines can be accessed and subsequently delivered to Michigan. The best terminal options vary depending on the distance from specific delivery points. [emphasis in original]

For the western UP, the most cost-effective option in the event of a Line 5 shutdown, was determined to be transporting propane by rail from Edmonton, Alberta to Escanaba, Michigan, then by truck to Rapid River, which would still function as a storage and distribution facility. The Report estimated that the cost of this alternative would be very close to (only \$.04/gallon more) than the spot market price observed at Rapid River in 2019. See Technical Report, pp 67–68. For the Eastern UP, the most cost-effective option would be to continue the current practice of transporting propane by rail from Edmonton to the Kincheloe facility. This option was estimated to have a wholesale price only \$.02/gallon more than the spot price observed at Rapid River in 2019. This option could also be enhanced by increasing storage capacity at Kincheloe. See Technical Report, pp 69–70.

- The Technical Report concluded that “supply disruptions will likely result in modest wholesale price increases, which would consequently affect Michigan consumers at the retail level.” (Report, p 83, emphasis added.) While any increase in propane prices is a matter of great concern, and should be mitigated as much as possible through appropriate planning and policy measures, the Technical Report undercuts claims that shutting down Line 5 would inevitably cause propane shortages and large price spikes in the UP or elsewhere in Michigan.
- The effects of changes in propane supply can be mitigated by optimizing and enhancing propane storage capacity. Practices that encourage retail propane customers to have their storage tanks automatically re-filled throughout the year can take advantage of lower market prices during the warmer, non-heating season months, and minimize supply disruptions and the need for repeated re-fills during periods of peak winter demand. See Technical Report, pp 66, 75–76, 84. In addition, as noted above, investments in expanding bulk propane storage facilities can take advantage of potentially lower cost supply alternatives such as rail transport during periods of lower propane demand. See Technical Report, pp 82, 84.
- Strategies to reduce propane consumption through energy efficiency measures can also mitigate the effects of changes in propane supply. Investments in energy efficiency and conservation, such as home weatherization programs, could over time, cumulatively reduce propane consumption, helping to offset supply changes and price increases. See Technical Report, pp 65, 83.

**Comments on Specific Committee Recommendations
in the Draft Report**

The Draft Report contains a number of sound recommendations that could be helpful to the State in planning for the shutdown of Line 5 or other potential changes to the current propane supply system in Michigan. Comments on these are outlined below.

- **Storage Capacity** As noted above, and stated in the Draft Report, full use of existing residential and commercial customer propane storage capacity and the expansion of bulk storage capacity in the UP could mitigate the effects of changes in propane supply. The Draft Report includes three recommendations related to storage.

Recommendation 1: The Legislature should explore creation of a customer storage incentive program designed to encourage propane retailers to work with their customers to maximize the amount of propane in customer storage at the beginning of and throughout the heating season.

This makes sense. But the Committee should also consider whether instead of relying entirely on programs delivered through propane retailers, this recommendation could be expanded to include legislative action targeted directly to consumers such as increased public information campaigns and possibly direct financial incentives to the residential and commercial propane consumers to maximize storage.

Recommendation 2: The Legislature should explore a wholesalers and retailers storage incentive program to encourage wholesalers and retailers to create more propane storage capacity. In order to avoid creating a disadvantage for companies that made early investments in this area, the incentive could be designed to focus on the relationship between a company's annual sales and its storage capacity.

This too is a sound recommendation. But, if possible, the recommendation could be clarified to give examples of possible incentives and how they could be funded. In addition, such incentives should be designed to avoid placing financial burdens on the retail propane customers.

Recommendation 3: The Department of Technology, Management and Budget should explore whether the State could contract for propane in a manner that would create the equivalent of a strategic propane reserve to be used in case of a disruption.

While intriguing, this recommendation should be clarified, if possible. Neither the Draft Report nor the Technical Report provide any background information about the nature, extent and location of existing State of Michigan propane use and storage facilities in the UP. As currently presented in the Draft Report, it is not clear how this recommendation could be implemented and what the extent of the public benefit would be.

- Supply Infrastructure. As stated in the Draft Report (pp 4–5) and detailed in the Technical Report, improving rail infrastructure at strategic locations in the UP could enhance the efficiency and resiliency of propane transport as well as provide opportunities for more supply alternatives and cost savings. The Draft Report includes the following recommendations.

Recommendation 4: The Legislature should review the Freight Economic Development Program to determine if any program revisions are needed to encourage greater capacity for receiving propane delivery by rail and diversifying our supply infrastructure to protect Michigan consumers.

This is a sound and particularly important recommendation. As explained in the Draft Report, the existing Freight Economic Development Program administered by the Michigan Department of Transportation can provide new and expanding rail customers with up to 50 percent of the costs associated with improved rail infrastructure, such as rail spurs, on their property. The recommended legislative review and potential program changes should be specifically targeted to enhance rail infrastructure at key locations in the UP. For example, providing a direct rail connection to the Rapid River propane storage and distribution facility could be particularly useful. And, because of the lead time necessary expand rail infrastructure, this recommendation should explicitly urge action on an expedited timeframe.

Recommendation 5: The Michigan Department of Transportation should review the ratings of Michigan rail lines provided by the rail carriers and, if necessary, make a recommendation to the Legislature about any needed rail line upgrades to facilitate propane distribution. In addition, MDOT should inventory spur lines located in the Upper Peninsula to determine if some of those could be used to park propane rail cars in the case of an energy emergency.

This too is a sound recommendation. As noted in the both the Draft Report and Technical Report, to receive propane by rail, a location must be served by a rail line approved for hazardous substances and have offloading capabilities. Again, the recommendation should specifically target the UP and urge expedited action.

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Addressing the High Cost of Energy in the Upper Peninsula. The Draft Report (pp 6–9) also appropriately focuses on the need for legislative and state agency action to address the high cost of energy in general and propane in particular in the UP. It includes a series of important recommendations (Recommendations 7–12) that include various strategies for assisting low-income customers in meeting their energy needs. For example, the Draft Report recommends actions to promote home weatherization assistance as well as basic home repairs needed to make homes eligible for that assistance. These recommendations can not only promote the safety, health, and economic well-being of Michigan citizens, but also, over time, conserve and reduce demand for propane. But the current recommendations do not address other potential measures to reduce propane demand such as incentives for the installation and use of alternative sources of energy for meeting electricity and home heating needs. The Committee should consider expanding its recommendations to do so.

Consumer Protection. The Draft Report (p 10) correctly notes that the sale of propane is not a regulated market and that a presentation by the Chief of the Attorney General’s Corporate Oversight Division explained the limitations of Michigan’s existing Consumer Protection Act in addressing excessive prices for propane and other unregulated commodities. But the Draft Report ignores, without explanation, the remainder of Mr. Potchen’s presentation which included a summary and draft text of a proposed Energy Pricing Protection Act shared with the Task Force in November 2019. On March 17, 2020, Sen. Jeremy Moss, D-Southfield, and Sen. Ruth Johnson, R-Holly, introduced SB 848 which is substantially the same draft legislation that Mr. Potchen presented. The proposed legislation would provide tools to prevent excessive charges for propane and other energy sources in the event of a market disruption. Instead, the Draft Report includes the following recommendation:

Recommendation 14: The Legislature should explore adopting fuel price gouging legislation, using the Wisconsin law as a potential model.

The Wisconsin law referred to is apparently Wisconsin Statute 100.305 and the associated administrative rules, Wis. Admin. Code ch. ATPC 106. Wisconsin’s “Price Gouging” law prohibits “unreasonably excessive” wholesale or retail prices and has standards for determining such prices based in part upon the actual costs incurred by the seller. While this statute provides a potentially useful model for legislation in Michigan, it is subject to an important limitation: it applies only when the governor has declared an emergency. By contrast, the proposed Energy Pricing Protection Act (SB 848), does not contain that limitation, and would more broadly apply to any market disruption. The Committee should consider modifying

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its recommendation on this subject to support SB 848 which would provide the broadest possible protection to Michigan consumers with respect to excessive propane prices. I have already indicated my support for this bill.

Thank you again for the opportunity to comment on the Draft Report and your work on this vital subject.

Sincerely,

A handwritten signature in blue ink that reads "Dana Nessel". The signature is written in a cursive, flowing style.

Dana Nessel
Attorney General

DN:RR:jg