



Enbridge Energy Declaratory Ruling Request

1. What did Enbridge propose in its request in Case No. U-20763?

Enbridge requests a decision on its siting application under Act 16 of 1929 to construct a replacement pipeline and to relocate it into a tunnel beneath the Straits of Mackinac (Line 5). Enbridge also seeks an alternative finding that the Act 16 application is not needed through its request for a declaratory ruling that it already has the authority to construct the replacement segment for Line 5 based on the Commission's grant of authority in its 1953 order. (March 31, 1953, Opinion and Order, D-3903-53.1.)

2. What is a declaratory ruling?

A declaratory ruling is a ruling or order issued by the Michigan Public Service Commission (MPSC or Commission) that resolves uncertainty for the parties. A party can seek a declaratory ruling by the Commission for a determination or clarification of legal rights or obligations. The requested ruling or order relates to the applicability of a statute, administrative rule, or Commission order to an actual and specific set of facts. It cannot be requested for general or hypothetical circumstances. The ruling only applies on a going-forward basis and cannot be retroactive. A request for a declaratory ruling is not like a normal contested case before the Commission where testimonies and evidentiary hearings occur since there is only one requesting party. Instead, it is similar to an ex parte request. However, the Commission may require a contested proceeding instead of issuing a declaratory ruling. The Commission has discretion whether or not to issue a declaratory ruling. Declaratory rulings are governed by [MCL 24.263](#) and [Michigan Administrative Code, R 792.10448 \(Rule 448\)](#) and may be appealed and subject to review in a higher court.

3. What are the next steps?

- The Commission issued an [order](#) on April 22, 2020 setting a schedule for public comments from interested persons addressing Enbridge's legal interpretation that the Act 16 application is not needed, as posed in the declaratory ruling request.
- The Commission also determined that the request for Act 16 approval should be temporarily suspended until a decision on the request for a declaratory ruling is made.

4. How can I participate?

The April 22 [order](#) provides that interested persons may submit written or electronic comments regarding a legal analysis of Enbridge's request for a declaratory ruling to the MPSC on or before **May 13, 2020**. Reply comments may be submitted on or before **May 27, 2020**.

Comments should reference Case No. U-20763 and can be submitted using any of the following methods:

- Written comments: Executive Secretary, Michigan Public Service Commission
7109 W. Saginaw Hwy.,
Lansing, MI 48917
- Electronic comments (preferred): mpscdockets@michigan.gov.

All information submitted to the MPSC in this matter will become public information available on the MPSC's website and subject to disclosure.

5. Is there a set timeframe for the Commission to decide on the request for declaratory ruling?

There is no set timeline for the Commission to make a decision; however, the Commission is committed to making a timely decision regarding the declaratory ruling request.

6. What are the Commission’s options in responding to a declaratory ruling?

The Commission can grant the declaratory ruling request, deny the declaratory ruling request, choose to not issue a decision, or refer the matter to a contested case process.

If the Commission issues a declaratory ruling that Enbridge already has the requisite authority needed from the Commission for the Line 5 Project, no further Commission proceedings will be necessary with regard to Enbridge’s application, thus saving the time and resources of the Commission and other interested persons.

7. Will the public be notified of the Commission decision?

Yes. If the Commission denies the request or otherwise decides to proceed with the Act 16 siting case, it will require Enbridge to provide legal notice of the siting application and contested case in newspapers and to governmental bodies. The public can also follow the case through the MPSC’s e-dockets system or by signing up for email updates by going to www.Michigan.gov/MPSCLine5.

8. The Commission issued an [order on June 30, 2020](#) addressing the declaratory ruling request. What did the Commission decide?

The Commission found that the Line 5 Project differs significantly than what was approved by the 1953 orders. Therefore, Enbridge’s request for declaratory relief has been denied and its Act 16 application has been set for a contested case hearing in [Case No. U-20763](#).

June 30, 2020

DISCLAIMER: This document was prepared to aid the public’s understanding of certain matters before the Commission and is not intended to modify, supplement, or be a substitute for the Commission’s orders. The Commission’s orders are the official action of the Commission.