



---

September 13, 2024

To: Mairead Lavery, President and CEO, Export Development Canada

CC: Chief Corporate Sustainability Officer and Senior Vice President, Sustainable Business & Enablement, Export Development Canada  
Vice President, ESG, Export Development Canada  
ESG Customer Success Team, Export Development Canada

**Re: Information on the Line 5 pipeline for consideration in EDC financing decisions regarding Enbridge Energy**

The Bay Mills Indian Community,<sup>1</sup> with support from EarthRights International, provides this submission to Export Development Canada (EDC) to share information about the human rights and environmental risk factors associated with the Line 5 dual pipelines (Line 5), operated by Canadian company Enbridge.<sup>2</sup> We make this submission to inform EDC's due diligence process and decision making regarding its customer relationship with Enbridge.

EDC has a longstanding relationship with Enbridge. Since 2001, EDC has provided financing for Enbridge 44 times, including "working capital," "support in relation to oil or gas transportation and storage," and "financing renewals."<sup>3</sup> EDC provided Enbridge \$100-200 million in relation to oil or gas transportation and storage in the United States in 2023,<sup>4</sup> and just renewed a \$200-300 million loan to Enbridge on July 23, 2024.<sup>5</sup> Based upon this transaction history, EDC has an ongoing customer relationship with Enbridge, and we anticipate that EDC may provide additional financing to Enbridge in the future.

---

<sup>1</sup> Bay Mills Indian Community or Gnoozhekaaning, "Place of the Pike," is a U.S. federally recognized Tribal Nation in Northern Michigan, and is a signatory to the March 28, 1836 Treaty of Washington by which the right to fish, hunt, and gather within the ceded territory and ceded waters of Lakes Superior, Huron and Michigan – including the Straits of Mackinac – was expressly reserved for all time. The Line 5 dual pipelines run through our treaty-ceded territory and waters and pose serious threats to the exercise of our reserved treaty rights, our ability to preserve cultural resources, our cultural and religious interests in the Great Lakes, our economy, and the health and welfare of our tribal citizens.

<sup>2</sup> Enbridge refers to the group of companies operating under that name, including Enbridge (U.S.) Inc.; Enbridge Inc.; Enbridge Energy Partners, L.P.; and Enbridge Pipelines Inc.

<sup>3</sup> This data was obtained from EDC's publicly available annual transaction disclosures. Export Development Canada (EDC), *Historical Individual Transaction Information*, <https://www.edc.ca/en/about-us/corporate/disclosure/reporting-transactions/historic-individual-transactions.html> (last visited July 21, 2024).

<sup>4</sup> EDC, *Individual Transaction Information 2023*, <https://www.edc.ca/content/dam/edc/en/corporate/disclosure/reporting/2023-individual-transactions.pdf>.

<sup>5</sup> EDC, *Individual Transaction Information 2024*, <https://www19.edc.ca/edcsecure/disclosure/DisclosureView.aspx> (last visited July 21, 2024).

As laid out below, one of Enbridge’s major projects, Line 5, poses severe human rights and environmental threats. Line 5 is a transboundary pipeline that runs from western to eastern Canada through Michigan and Wisconsin. Line 5 is at real risk of a catastrophic oil spill, posing grave threats to the Great Lakes region. The Great Lakes provide drinking water to more than 48 million people in Canada and the United States and sustain numerous communities, including Indigenous Peoples. Despite credible evidence of the risks and broad opposition to the pipeline, Enbridge continues to operate Line 5 – including in some places where it lacks legal permission.

EDC should consider Line 5’s human rights and environmental impact as it assesses its ongoing customer relationship with Enbridge. Accordingly, this submission provides: (1) a factual background detailing human rights and environmental risk factors of Enbridge’s Line 5 pipeline; (2) an analysis of whether financing to Enbridge meets EDC’s human rights and environmental commitments; and (3) recommendations and requests for additional information.

## **I. Human Rights and Environmental Risk Factors of Enbridge’s Line 5 Pipeline**

Line 5 is a 1,038 kilometer dual pipeline that transports up to 87 million liters of crude oil and natural gas liquids daily from western to eastern Canada, passing through the U.S. states of Wisconsin and Michigan.<sup>6</sup> The pipeline crosses hundreds of interconnected waters, including the Straits of Mackinac (“the Straits”) between the Great Lakes Huron and Michigan, and traverses traditional territories of numerous Indigenous Nations, including the Bay Mills Indian Community.<sup>7</sup>

### **A. The Line 5 pipeline poses a real risk of a catastrophic oil spill.**

Line 5 and similar Enbridge pipelines have experienced multiple oil spills with devastating consequences.<sup>8</sup> This includes one of the largest inland oil spills in U.S. history – the 2010 spill of the Line 6B pipeline – which released about 4 million liters of heavy crude oil into Michigan’s Kalamazoo River after what federal investigators called a “complete breakdown of safety.”<sup>9</sup> Since 1968, Line 5 itself has spilled over 4.5 million liters of oil in at least 33 incidents.<sup>10</sup> In

---

<sup>6</sup> Michigan Dept. of Env’t, Great Lakes, and Energy, *Line 5 in Michigan, Overview*, <https://www.michigan.gov/egle/about/featured/line5/overview#Details> (last visited July 21, 2024); Enbridge, *About Line 5*, <https://www.enbridge.com/projects-and-infrastructure/public-awareness/line-5-michigan/about-line-5> (last visited July 21, 2024).

<sup>7</sup> For a map of Anishinaabe territory in the United States, see United States Environmental Protection Agency, *Indian Lands in US EPA Region 5*, <https://www.epa.gov/tribal/indian-lands-us-epa-region-5>. For a map of Anishinaabe territory in Canada, see *Anishinabek Nation*, <https://www.anishinabek.ca/who-we-are-and-what-we-do/> (last visited Aug. 2, 2024).

<sup>8</sup> Greenpeace, *Dangerous Pipelines*, p. 9 (Nov. 14, 2018), <https://www.greenpeace.org/usa/reports/dangerous-pipelines/> (calculating that Enbridge spilled 2.8 million gallons of oil across the United States between 2002 and 2018).

<sup>9</sup> Lisa Song & Elizabeth McGowan, *Federal Agency Blames ‘Complete Breakdown of Safety at Enbridge’ for 2010 Oil Spill*, INSIDE CLIMATE NEWS (July 10, 2012), <https://insideclimatenews.org/news/10072012/national-transportation-safety-board-ntsb-kalamazoo-enbridge-6b-pipeline-marshall-michigan/#:~:text=%E2%80%9CThis%20investigation%20identified%20a%20complete,pump%20crude%20into%20the%20environment> (citing findings of the Pipeline and Hazardous Materials Safety Administration).

<sup>10</sup> Garrett Ellison, *Enbridge Line 5 has spilled at least 1.1M gallons in past 50 years*, MLIVE (Apr. 26, 2017), [https://www.mlive.com/news/2017/04/enbridge\\_line\\_5\\_spill\\_history.html](https://www.mlive.com/news/2017/04/enbridge_line_5_spill_history.html).

certain incidents, high levels of harmful chemicals remained in the area for more than 30 years after the spill.<sup>11</sup> These examples are just the documented spills.

Line 5 poses real risks of additional oil spills, including catastrophic oil spills, at multiple points due to its aged infrastructure and documented failures. When the pipeline was installed in 1953 – over 70 years ago – an engineer who worked on the installation stated it would “last 50 years.”<sup>12</sup> Operating an aging pipeline risks infrastructure failure, because pipelines degrade over time due to corrosion, pressure, and use.<sup>13</sup> Moreover, government agencies have documented Enbridge’s persistent violations of safety protocols.<sup>14</sup> One database contains 102 U.S. federal enforcement actions for Enbridge’s violations of environmental regulations since 2000,<sup>15</sup> including failing to inspect its pipelines for vulnerabilities.<sup>16</sup> Regarding Line 5, Michigan’s Department of Natural Resources found that “threats to pipeline integrity from incorrect operations and procedural errors . . . present[ ] a substantial, inherent and unacceptable risk of a catastrophic oil spill with grave ecological and economic consequences.”<sup>17</sup>

While an oil spill could continue to occur anywhere along the aged pipeline, the stretch under the Straits of Mackinac is particularly vulnerable because it lies exposed below busy shipping lanes.<sup>18</sup> Indeed, Enbridge vessels struck *their own* pipeline with anchors or cables at least three times in 2018 and 2019.<sup>19</sup> In 2020, the pipeline was damaged so severely that a U.S. federal court ordered Enbridge to temporarily shut it down.<sup>20</sup> Additionally, documents provided by

---

<sup>11</sup> Keith Matheny, *30 Years Later, Contamination Remained at Site of Pipeline Spill*, DETROIT FREE PRESS (May 7, 2016), <https://www.freep.com/story/news/local/michigan/2016/05/07/enbridge-line5-oil-spill-hiawatha-national-forest/83507228/>.

<sup>12</sup> Spencer Chumbley, Vice Media, LLC, *The Dirty Secret at the Bottom of the Great Lakes: Oil & Water*, at 9:11 (Sept. 1, 2015) (interview with retired Engineer Bruce Trudgen who recalls that “at that time, they said . . . this pipe’s gonna last 50 years”), <https://www.youtube.com/watch?v=ic9NcKtEPGs&t=3s>.

<sup>13</sup> See Pipeline and Hazardous Materials Safety Administration, *Fact Sheet: Pipe Defects and Anomalies* (Dec. 1, 2011), <https://primis.phmsa.dot.gov/comm/FactSheets/FSPipeDefects.htm?nocache=7250>.

<sup>14</sup> See, e.g., National Transportation Safety Board, *Pipeline Accident Report: Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release Marshall, Michigan July 25, 2010*, p. xii (July 10, 2012), <https://www.nts.gov/investigations/AccidentReports/Reports/PAR1201.pdf>; *Michigan Petroleum Pipeline Task Force Report* (July 2015), available at <https://www.mackinacislandnews.com/wp-content/uploads/styles/Pipeline%20Report%20July%202015.pdf>.

<sup>15</sup> Violation Tracker, *Parent Company Summary: Enbridge*, <https://violationtracker.goodjobsfirst.org/prog.php?parent=enbridge> (last visited July 21, 2024).

<sup>16</sup> Stipulation and Agreement Regarding Assessment and Payment of Stipulated Penalties Relating to Timeliness of Certain in-Line Inspections, *United States v. Enbridge Energy Limited Partnership*, No. 1:16-cv-914 (W.D. Mich. May 2, 2018) (Dkt. 17), <https://www.documentcloud.org/documents/4451281-Enbridge-May-2018.html>; see also David Hasemyer, *Enbridge Fined for Failing to Fully Inspect Pipeline After Kalamazoo Oil Spill*, INSIDECLIMATE NEWS (May 3, 2018), <https://insideclimatenews.org/news/03052018/enbridge-fined-tar-sands-oil-pipeline-inspections-kalamazoo-michigan-dilbit-spill>.

<sup>17</sup> State of Michigan, Office of the Governor, Dept. of Natural Resources, *Notice of Revocation and Termination of Easement*, p. 17 (Nov. 13, 2020), [https://content.govdelivery.com/attachments/MIEOG/2020/11/13/file\\_attachments/1600920/Notice%20of%20Evocation%20and%20Termination%20of%20Easement%202811.13.20%29.pdf](https://content.govdelivery.com/attachments/MIEOG/2020/11/13/file_attachments/1600920/Notice%20of%20Evocation%20and%20Termination%20of%20Easement%202811.13.20%29.pdf) [hereinafter “Michigan Easement Revocation”].

<sup>18</sup> Michigan Easement Revocation at pp. 5-9 (citing Dynamic Risk Assessment Systems, *Alternatives Analysis for the Straits Pipeline* (June 27, 2017), <https://mipetroleumpipelines.org/document/alternatives-analysis-straits-pipeline>; Michigan Technological University, *Independent Risk Analysis for the Straits Pipelines* (Sept. 15, 2018), <https://mipetroleumpipelines.org/document/independent-risk-analysis-straits-pipelines-final-report>).

<sup>19</sup> Michigan Easement Revocation at pp. 6-7.

<sup>20</sup> See Temporary Restraining Order, *Nessel v. Enbridge Energy*, No. 19-474-CE (Ingham Cnty. Cir. Ct. Mich. June 25, 2020).

Enbridge reveal that the company knowingly left spans of the pipeline in the Straits unsupported from 1963 until at least 2012, ignoring requirements to physically support the pipeline every 75 feet.<sup>21</sup>

Natural changes in the surrounding landscape exacerbate these issues. Erosion at the Bad River Meander is rapidly shrinking the land buffer between Line 5 and the waterway: in May 2023, the Bad River Band reported that less than 15 feet of river bank remained between the river and the Line 5 pipeline at four separate locations.<sup>22</sup> The U.S. Pipeline and Hazardous Materials Safety Administration has warned that pipelines exposed in this manner are in danger of rupture, with several devastating ruptures occurring this century.<sup>23</sup> A U.S. federal court accordingly found that the erosion at the Bad River Meander exposes the pipeline to “an actual risk of a significant rupture.”<sup>24</sup>

### **B. A Line 5 spill would cause environmental destruction and irreparable harm to Indigenous Peoples.**

A major Line 5 spill would pose grave threats to the Great Lakes and the communities, flora, and fauna supported by this vital ecosystem and critical water source. An oil spill from Line 5 could contaminate more than 375,000 acres of land and wetlands, 450 lakes, and thousands of kilometers of shorelines and rivers,<sup>25</sup> and would jeopardize access to drinking water for more than 48 million people.<sup>26</sup> A spill within the Straits would be particularly ecologically devastating. The Straits are the “worst possible place” for an oil spill in the Great Lakes because of their strong, shifting currents,<sup>27</sup> and their location between two of the Great Lakes, which contain over 20 percent of the world’s fresh surface water.<sup>28</sup> One analysis cited by the International Joint Commission, the binational commission the United States and Canada charged with monitoring the Great Lakes’ environmental protection, estimated that a one million-gallon leak from Line 5

---

<sup>21</sup> Michigan Easement Revocation at p. 13; see National Wildlife Federation, *The Edge of Disaster for the Great Lakes: Near Misses from Enbridge’s Aging and Degraded Line 5*, p. 5 (2020), [nwf.org/-/media/Documents/PDFs/Press-Releases/2020/11-20-20-Line-5 Report](https://www.nwf.org/-/media/Documents/PDFs/Press-Releases/2020/11-20-20-Line-5-Report).

<sup>22</sup> See Bad River Band of the Lake Superior Tribe of Chippewa Indians’ Memorandum of Law in Support of Emergency Motion for Injunctive Relief, *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 1 (W.D. Wis. May 9, 2023) (Dkt. 629).

<sup>23</sup> Pipeline and Hazardous Materials Safety Administration, *Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Flooding, River Scour, and River Channel Migration*, 84 Fed. Reg. 15, 715 (April 11, 2019), <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2020-03/2019-07132.pdf>.

<sup>24</sup> *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2022 U.S. Dist. LEXIS 213368, at \*5-9 (W.D. Wis. Nov. 28, 2022).

<sup>25</sup> See Bay Mills Indian Community, *Bay Mills Indian Community’s Comments On The Scope Of The Environmental Impact Statement For The Enbridge Line 5 Tunnel Project, Submitted to U.S. Army Corps of Engineers*, pp. 34 (Oct. 14, 2022), [https://earthjustice.org/wp-content/uploads/bmic\\_scoping\\_comments\\_on\\_line\\_5\\_eis.pdf](https://earthjustice.org/wp-content/uploads/bmic_scoping_comments_on_line_5_eis.pdf) [hereinafter “Bay Mills Tunnel Comments”]; see also David Schwab, *Statistical Analysis of Straits of Mackinac Line 5: Worst Case Spill Scenarios*, p. 10, <http://glenarborsun.com/wp-content/uploads/2016/03/Mackinac-Line-5-Worst-Case-Spill-Scenarios.pdf> (concluding more than 1,000 km of shoreline could be impacted).

<sup>26</sup> Mich. Dept. of Env’t, Great Lakes, and Energy, *State of the Great Lakes Report*, p. 3 (July 2020), <https://www.michigan.gov/-/media/Project/Websites/egle/Documents/Reports/OGLE/State-of-the-Great-Lakes/Report-2019.pdf>.

<sup>27</sup> See University of Michigan, *Straits of Mackinac ‘worst possible place’ for a Great Lakes oil spill, U-M researcher concludes* (July 10, 2014), <https://news.umich.edu/straits-of-mackinac-worst-possible-place-for-a-great-lakes-oil-spill-u-m-researcher-concludes/>.

<sup>28</sup> See U.S. Env’t Protection Agency, *Facts and Figures About the Great Lakes*, <https://www.epa.gov/greatlakes/great-lakes-facts-and-figures> (last visited July 21, 2024).

into the Straits – similar in size to previous Enbridge pipeline spills in the region – would affect approximately 15 percent of Lake Michigan’s open waters and 60 percent of Lake Huron’s open waters.<sup>29</sup>

Environmental devastation from a Line 5 spill would cause irreparable harm to Indigenous communities, disrupting their livelihoods, ability to practice culture, and way of life.<sup>30</sup> The Great Lakes are critically important and spiritually significant water bodies for the Anishinaabe, the Haudenosaunee, and many Tribal Nations, First Nations, and Métis peoples.<sup>31</sup> A major oil spill would impact animal and plant species on which many rely for subsistence by polluting the water and shorelines of the Great Lakes and surrounding wetlands and rivers,<sup>32</sup> including Ramsar Sites like the Kakagon and Bad River Sloughs.<sup>33</sup> A spill in the Straits would wipe out fisheries that have provided a food source and lain at the heart of Tribal way of life for millennia, and that still form the core of the Tribal treaty-protected fisheries.<sup>34</sup>

The Great Lakes contain many sacred sites for Anishinaabe People and are traditional cultural property.<sup>35</sup> According to the Anishinaabe origin story, the Straits are the center of creation of Turtle Island and hold an ongoing spiritual significance.<sup>36</sup> Water, plants, and animals are necessary for Anishinaabe cultural ceremonies and traditions.<sup>37</sup> Many Anishinaabe women are water keepers and pray and care for water during ceremonies.<sup>38</sup> Wild rice (manoomin) is “an irreplaceable cultural, spiritual, nutritional, and commercial resource and sacred relative to . . . Tribal Nations in the Upper Midwest and Great Lakes region.”<sup>39</sup> Recently, in recognition of the significance of manoomin to the Tribal Nations, Michigan designated manoomin the state’s official native grain.<sup>40</sup> The Bay Mills community uses Lake Whitefish and Lake Trout for

---

<sup>29</sup> Great Lakes Science Advisory Board, *Potential Ecological Impacts of Crude Oil Transport in the Great Lakes Basin*, p. 43 (Oct. 2018), <https://www.ijc.org/sites/default/files/2019-01/Potential%20Ecological%20Impacts%20of%20Crude%20Oil%20Transport%20in%20the%20Great%20Lakes%20Basin%20-%20Oct%202018.pdf> (citing Schwab 2016).

<sup>30</sup> See Oliver Milman, “We Can’t Drink Oil”: How a 70-Year-old Pipeline Imperils the Great Lakes,” THE GUARDIAN (Sept. 26, 2023), <https://www.theguardian.com/us-news/2023/sep/26/line-5-pipeline-great-lakes-michigan-oil-water>; Bay Mills Indian Community, *Bay Mills Indian Community’s Comments On The Scope Of The Environmental Impact Statement For The Enbridge Line 5 Tunnel Project, Submitted to U.S. Army Corps of Engineers*, pp. 2-7 (Oct. 14, 2022), [https://earthjustice.org/wp-content/uploads/bmic\\_scoping\\_comments\\_on\\_line\\_5\\_eis.pdf](https://earthjustice.org/wp-content/uploads/bmic_scoping_comments_on_line_5_eis.pdf) [hereinafter “Bay Mills Tunnel Comments”].

<sup>31</sup> Environmental Defence Canada, *Closing Enbridge’s Line 5 Pipeline*, <https://environmentaldefence.ca/report/closing-line-5/> (last visited July 22, 2024).

<sup>32</sup> Bad River Band, *Comments on the Section 404 and Section 10 Permit Application for the Enbridge Line 5 Pipeline Segment Relocation Project*, Army Corps of Engineers, St. Paul District, File No. MVP-2020-00260-WMS, pp. 3-5 (Mar. 22, 2022), [http://www.badriver-nsn.gov/wp-content/uploads/2022/03/bad\\_river\\_band\\_comment\\_letter\\_to\\_usace\\_03.22.2022\\_2.pdf](http://www.badriver-nsn.gov/wp-content/uploads/2022/03/bad_river_band_comment_letter_to_usace_03.22.2022_2.pdf) [hereinafter “Bad River Band Rerouting Comments”].

<sup>33</sup> Ramsar Sites Information Service, *Kakagon and Bad River Sloughs* (Feb. 2, 2012), <https://rsis Ramsar.org/tris/2001>.

<sup>34</sup> Bay Mills Tunnel Comments at pp. 30-31; Charles E. Cleland, *The Place of the Pike (Gnoozhekaaning): A History of the Bay Mills Indian Community*, p. 83 (U. Mich. Press, 2004).

<sup>35</sup> Bay Mills Tunnel Comments at pp. 7-8; see also Bad River Band Rerouting Comments, pp. 1, 18, 45-48.

<sup>36</sup> Bay Mills Tunnel Comments at pp. 2-3; Amicus Brief of Bay Mills Indian Community et. al., p. 4, *Enbridge v. Whitmer*, Docket No. 11:120-cv-01141 (W.D. Mich. Apr. 6, 2022) (Dkt. 75).

<sup>37</sup> Bay Mills Tunnel Comments, pp. 3, 38-39.

<sup>38</sup> *Id.* at p. 3.

<sup>39</sup> *Id.* at p. 39.

<sup>40</sup> Sheri McWhirter, *Do You Know what Manoomin is? Michigan’s State Native Grain*, MLIVE (Dec. 1, 2023).

naming, feasting in celebration of children, ghost suppers, and burial ceremonies.<sup>41</sup> Bay Mills scholars have identified that “the right to fish [is] an essential part of what it mean[s] to be Indian – what it mean[s] to be a part of the Bay Mills community.”<sup>42</sup>

The ongoing operation of Line 5 also exacerbates the climate crisis at a time when countries must transition away from fossil fuels.<sup>43</sup> Line 5’s upstream and downstream greenhouse gas (GHG) emissions amount to approximately 87 million metric tons of carbon dioxide equivalent annually.<sup>44</sup> That equals the annual GHG emissions of nearly 19 million gasoline-powered passenger vehicles.<sup>45</sup> Accordingly, Line 5 contributes to significant climate-induced harm to the Great Lakes and the treaty-protected natural resources vital to Indigenous communities.<sup>46</sup>

### **C. Line 5 lacks Indigenous Peoples’ consent and is operating in some places on Tribal and state lands without legal permission.**

Indigenous communities have not given their consent to the continued operation of Line 5. Far from granting consent, Indigenous communities in the United States and Canada have worked for years to decommission the pipeline given the risk a catastrophic oil spill poses to their health, culture, and environment.<sup>47</sup> In 2015 and 2016, Michigan’s 12 federally recognized Tribes passed resolutions calling to decommission Line 5.<sup>48</sup> In 2017, the Bad River Band ordered Enbridge to remove all infrastructure from the Bad River watershed.<sup>49</sup> In 2021, the Bay Mills Indian Community formally banished Line 5 from its territory, including the Straits.<sup>50</sup> The Midwest

---

<sup>41</sup> Bay Mills Tunnel Comments at p. 3.

<sup>42</sup> Cleland at p. 83.

<sup>43</sup> See Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, Summary for Policymakers (SPM), p. 14 (fig. SPM.3b, para. C.2) (2018), [https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM\\_version\\_report\\_LR.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM_version_report_LR.pdf).

<sup>44</sup> Earthjustice, *Line 5 Media Backgrounder* (June 2023), [https://earthjustice.org/wp-content/uploads/2023/06/line-5-media-backgrounder\\_v5-1.pdf](https://earthjustice.org/wp-content/uploads/2023/06/line-5-media-backgrounder_v5-1.pdf).

<sup>45</sup> *Id.*

<sup>46</sup> See generally Great Lakes Indian Fish and Wildlife Commission, *Aanji-bimaadiziimagak o’ow aki, Climate Change Vulnerability Assessment Version 2* (Jan. 2023), [http://data.glifwc.org/download/archive.bio/Aanji-bimaadiziimagak\\_o\\_ow\\_aki\\_digital\\_02212023.pdf](http://data.glifwc.org/download/archive.bio/Aanji-bimaadiziimagak_o_ow_aki_digital_02212023.pdf); Bay Mills Tunnel Comments, pp. 35-42; Bad River Band Rerouting Comments, pp. 21-24, 47.

<sup>47</sup> See Oil and Water Don’t Mix, *Federally-Recognized Indian Tribes are Speaking Out to Protect this Vital and Sacred Water*, [https://www.oilandwaterdontmix.org/tribal\\_supporters](https://www.oilandwaterdontmix.org/tribal_supporters) (last visited July 21, 2024).

<sup>48</sup> See Bay Mills Indian Community, *Line 5 Information Portal*, <https://www.baymills.org/enbridge-information-portal> (last visited Apr. 3, 2023); see also Michelle Woodhouse & Reg Niganobe, *Canada’s support of Line 5 violates Indigenous treaty rights and harms the natural world*, THE TORONTO STAR (Nov. 10, 2022), <https://www.thestar.com/opinion/contributors/2022/11/10/canadas-support-of-line-5-violates-indigenous-treaty-rights-and-harms-the-natural-world.html>.

<sup>49</sup> Press Release, Bad River Band of Lake Superior Tribe of Chippewa Indians, *Mashkiziibi (Bad River) Band Denies Renewal of Line 5 Grant of Easement* (Jan. 5, 2017), <https://unitedindefenseofthewater.org/2017/01/05/bad-river-band-denies-renewal-of-enbridge-line-5-grant-of-easement/>.

<sup>50</sup> Bay Mills Indian Community, *Banishment of Enbridge Energy, Inc. Line 5 Dual Pipelines from the 1836 Treaty of Washington Ceded Territory, Waters of the Great Lakes, and the Straits of Mackinac*, 24 Res. 21-05-10A (May 10, 2021), [https://narf.org/nill/documents/20210510BayMills\\_banish\\_Enbridge.pdf](https://narf.org/nill/documents/20210510BayMills_banish_Enbridge.pdf).

Alliance of Sovereign Tribes<sup>51</sup> and the Anishinabek Nation in Canada<sup>52</sup> have issued similar orders.

Enbridge also faces lawsuits in U.S. courts where Line 5 is crossing Tribal and state lands without permission. The Bad River Band of the Lake Superior Tribe of Chippewa Indians (Bad River Band) has a pending case against Enbridge in federal court in Wisconsin. In 2013, Enbridge's easements on parcels of land on the Bad River Band's Reservation expired and were not renewed by the Tribe.<sup>53</sup> Enbridge did not remove the pipeline in accordance with the easement's terms and the Band's demands, and to this day continues to operate on the Bad River Reservation.<sup>54</sup> In 2019, after years of negotiations regarding removal of the pipeline, the Bad River Band sued Enbridge for trespass and nuisance.<sup>55</sup> The court held that Enbridge is "a conscious or willful trespasser" on the Band's property.<sup>56</sup> In June 2023, the court ordered Enbridge to decommission the stretch of the pipeline on the Band's property, but gave Enbridge up to three years to re-route the pipeline.<sup>57</sup> This was despite the court's recognition that the ongoing trespass would cause "irreparable harm" to the Band's "sovereign right to control its own land" and protect tribal resources.<sup>58</sup> Enbridge and the Bad River Band appealed this decision, which is pending before the 7th Circuit Court of Appeals.<sup>59</sup>

Enbridge is also involved in two lawsuits with Michigan state officials. Line 5 runs under the Straits of Mackinac pursuant to a 1953 easement from the State of Michigan.<sup>60</sup> In June 2019, Michigan's Attorney General brought suit in state court to stop Enbridge from operating the pipeline, arguing that the Line 5 easement constituted a public nuisance and violated state environmental protections.<sup>61</sup> In November 2020, Michigan's Governor terminated the easement that allowed Enbridge to operate in the Straits and ordered the pipeline be shut down by 2021.<sup>62</sup> The Governor filed a complaint in state court to enforce the notice.<sup>63</sup> Enbridge successfully

---

<sup>51</sup> Midwest Alliance of Sovereign Tribes, *Midwest Alliance of Sovereign Tribes Opposes Continued Operation of Line 5 Across the Mackinac Straits*, Resolution No. 004-16 (Apr. 27, 2017), <https://d3n8a8pro7vhmx.cloudfront.net/oilandwaterdontmix/pages/723/attachments/original/1487109966/MAST-resolution-004-16.pdf?1487109966> (representing all 35 federally recognized Tribes in the U.S. Great Lakes states).

<sup>52</sup> Anishinabek Nation, *Anishinabek Nation leadership supports shut down of Line 5 pipeline* (May 6, 2021), <https://www.anishinabek.ca/2021/05/06/anishinabek-nation-leadership-supports-shut-down-of-line-5-pipeline/> (representing 39 Anishinabek First Nations in Canada).

<sup>53</sup> Bad River Band of Lake Superior Tribe of Chippewa Indians, Res. 1-4-17-738, *Removal of Lakehead Pipeline Company (now Enbridge Line 5) Pipeline from Bad River Lands and Watershed* (Jan. 4, 2017), [https://www.badriver-nsn.gov/wp-content/uploads/2019/11/Pipeline\\_Resolution\\_Line5\\_Removal\\_2017.pdf](https://www.badriver-nsn.gov/wp-content/uploads/2019/11/Pipeline_Resolution_Line5_Removal_2017.pdf).

<sup>54</sup> *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2022 U.S. Dist. LEXIS 161080, \*15 (W.D. Wis. Sept. 7, 2022).

<sup>55</sup> *Id.* at \*14-15.

<sup>56</sup> *Id.* at \*45.

<sup>57</sup> *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2023 U.S. Dist. LEXIS 105397, \*63-66 (W.D. Wis. June 16, 2023).

<sup>58</sup> *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Co.*, No. 19-cv-602-wmc at \*56-57.

<sup>59</sup> See Kyle Davidson, *U.S. Government weighs in on Line 5 appeal noting treaty concerns and issues with damages*, MICHIGAN ADVANCE (Apr. 10, 2024), <https://michiganadvance.com/2024/04/10/u-s-government-weighs-in-on-line-5-appeal-noting-treaty-concerns-and-issues-with-damages/>.

<sup>60</sup> *Nessel v. Enbridge Energy, LP*, 104 F.4th 958 (6th Cir. 2024)

<sup>61</sup> *Id.* at 961-62.

<sup>62</sup> *Id.* at 962.

<sup>63</sup> *Id.*

transferred the Governor’s case to federal court,<sup>64</sup> and the Governor voluntarily dismissed the case shortly thereafter.<sup>65</sup> Enbridge also counter-sued the Governor,<sup>66</sup> and that case remains pending in federal court.<sup>67</sup> Enbridge then sought to also transfer the Michigan Attorney General’s case to federal court.<sup>68</sup> However, Enbridge’s efforts were unsuccessful; the 6th Circuit Court of Appeals determined in June 2024 that the Attorney General’s case belongs in state court, where it will now proceed.<sup>69</sup>

**D. Proposed new sections of Line 5 also lack Indigenous communities’ consent and face legal and regulatory challenges.**

Rather than decommission the pipeline, Enbridge has proposed building a tunnel beneath the Straits of Mackinac to house a replacement pipeline.<sup>70</sup> Affected Indigenous Nations, including the Bay Mills Indian Community, have not provided free, prior, and informed consent (FPIC) for the proposal, and oppose any new construction in a place of ongoing spiritual, cultural, and economic significance to the Tribes and First Nations.<sup>71</sup>

The tunnel project poses serious environmental and human rights concerns. The U.S. Environmental Protection Agency (EPA) raised concerns that tunnel construction could “likely significant[ly] impact:” “(1) waters that are essential to the exercise of Tribal treaty rights and continuation of Tribal traditional lifeways; (2) high-quality surface waters that serve as vital drinking water supplies and wetlands with valuable ecological and habitat functions; (3) our global climate; and (4) a wide range of natural resources, should a spill occur.”<sup>72</sup> In a permitting process before the Michigan Public Service Commission, experts retained by the Bay Mills Indian Community highlighted the explosion risk of placing a hazardous liquid pipeline in an enclosed underground tunnel; an explosion would cause oil to seep into the surrounding geology and become a long-term source of pollution in the Great Lakes.<sup>73</sup> Environmental organizations and Tribal Nations have also expressed serious concerns about the project’s environmental impacts, including the danger of an oil spill and the pipeline’s contribution to climate change.<sup>74</sup> In December 2023, the Michigan Public Service Commission approved the permit for the tunnel

---

<sup>64</sup> *Id.* at 963.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> See Kyle Davidson, *Judge denies request to dismiss Enbridge’s case against Whitmer over Line 5 easement*, MICHIGAN ADVANCE (July 9, 2024), <https://michiganadvance.com/2024/07/09/judge-denies-request-to-dismiss-enbridges-case-against-whitmer-over-line-5-easement/>.

<sup>68</sup> *Nessel v. Enbridge* at 963.

<sup>69</sup> *Id.* at 972.

<sup>70</sup> See Enbridge, *The Great Lakes Tunnel Project*, <https://www.enbridge.com/projects-and-infrastructure/public-awareness/line-5-michigan/great-lakes-tunnel-project> (last visited July 21, 2024).

<sup>71</sup> See generally Bay Mills Tunnel Comments.

<sup>72</sup> U.S. Env’t Prot. Agency, *EPA scoping comments – Notice of Intent to Prepare a Draft Environmental Impact Statement for the Enbridge Line 5 Tunnel Project, Mackinac and Emmet Counties, Michigan*, p. 2 (Oct. 7, 2022).

<sup>73</sup> See Testimony and Exhibits of Richard B. Kuprewicz on behalf of Bay Mills Indian Community, MPSC Case No. U-20763 (Feb. 3, 2023), <https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y000006eeR6AAI>; Testimony and Exhibits of Brian J. O’Mara on behalf of Bay Mills Indian Community, MPSC Case No. U-20763 (Feb. 3, 2023), <https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y000006eeR6AAI>.

<sup>74</sup> See generally Bay Mills Tunnel Comments; Bad River Band Rerouting Comments; Letter from Aurora Conley, et al., to U.S. Army Corps of Engineers (Apr. 27, 2022), [https://d99d2e8d-06c9-433b-915d-f6e381b1acd4.usrfiles.com/ugd/d99d2e\\_2ebc5e8b59c547a0847c7a7ed1831522.pdf](https://d99d2e8d-06c9-433b-915d-f6e381b1acd4.usrfiles.com/ugd/d99d2e_2ebc5e8b59c547a0847c7a7ed1831522.pdf).



project.<sup>75</sup> Four Tribal Nations – including the Bay Mills Indian Community – appealed the decision, which is now pending in state court.<sup>76</sup>

Enbridge has also applied for permits to reroute Line 5 around the Bad River Band’s Reservation.<sup>77</sup> The proposed route passes along the borders of the Bad River Reservation and across rivers, streams, wetlands, and drinking water aquifers immediately upstream of the Reservation and located in the heart of the Band’s treaty-protected ceded territory.<sup>78</sup> The U.S. EPA, environmental organizations, and Tribal groups have raised substantial concerns regarding the environmental impact of this proposal, with the EPA stating that the reroute “will affect” key water resources on the Reservation.<sup>79</sup> The Bad River Band has not given its FPIC for the rerouting, which crosses its traditional territories and poses a grave threat to its watershed.<sup>80</sup> The reroute cannot be completed until Enbridge obtains multiple permits from local, state, and federal agencies, and review by the Mashkiziibii (Bad River) Natural Resources Department.<sup>81</sup> There is currently no estimation of when construction might begin.<sup>82</sup>

Based on the broad opposition to the new projects, there is no guarantee they will ever be permitted. The U.S. Army Corps of Engineers will not complete its environmental review of the tunnel project until 2026.<sup>83</sup> Therefore, even if a permit is granted, Enbridge would likely not complete construction until 2030.<sup>84</sup> Nonetheless, Enbridge intends to continue operating its aging pipeline during the many years of uncertain permitting and construction.<sup>85</sup>

## **E. International experts have expressed serious concerns about Line 5.**

---

<sup>75</sup> Press Release, Michigan Public Service Commission, *MPSC approves siting permit for Enbridge to relocate Line 5 in Straits of Mackinac, with conditions; finds tunnel best option* (Dec. 1, 2023), <https://www.michigan.gov/mpsc/commission/news-releases/2023/12/01/mpsc-approves-siting-permit-for-enbridge-to-relocate-line-5>.

<sup>76</sup> Earthjustice, *Statement: Four Michigan Tribes Appeal Line 5 Tunnel Permit* (Dec. 22, 2023), <https://earthjustice.org/press/2023/statement-four-michigan-tribes-appeal-line-5-tunnel-permit>.

<sup>77</sup> Enbridge, *Line 5 through the Bad River Reservation*, <https://www.enbridge.com/projects-and-infrastructure/public-awareness/line-5-wisconsin-segment-relocation-project/line-5-through-the-bad-river-reservation> (last visited July 21, 2024).

<sup>78</sup> *Id.*; see generally Bad River Band Rerouting Comments, pp. 10-11, 35-36.

<sup>79</sup> See EPA Rerouting Comments, p. 2; Bad River Band Rerouting Comments; Letter from Aurora Conley, et al., to U.S. Army Corps of Engineers (Apr. 27, 2022), [https://d99d2e8d-06c9-433b-915d-f6e381b1acd4.usrfiles.com/ugd/d99d2e\\_2ebc5e8b59c547a0847c7a7ed1831522.pdf](https://d99d2e8d-06c9-433b-915d-f6e381b1acd4.usrfiles.com/ugd/d99d2e_2ebc5e8b59c547a0847c7a7ed1831522.pdf).

<sup>80</sup> See generally Bad River Band Rerouting Comments.

<sup>81</sup> Wisconsin Department of Natural Resources, *Environmental Impact Analysis: Enbridge Pipeline Projects in Wisconsin*, <https://dnr.wisconsin.gov/topic/EIA/Enbridge.html> (last visited July 9, 2024).

<sup>82</sup> Laura Schulte, *Here’s where things stand with the controversial Line 5 reroute in northern Wisconsin*, MILWAUKEE JOURNAL SENTINEL (June 3, 2024), <https://www.jsonline.com/story/news/local/wisconsin/2024/06/03/the-latest-on-enbridges-line-5-pipeline-reroute-in-wisconsin/73921096007/>

<sup>83</sup> U.S. Army Corps of Engineers, Detroit District, *NEPA Timeline*, Line 5 Environmental Impact Statement (EIS), <https://www.line5tunneleis.com/nepa-timeline/> (last visited July 9, 2024).

<sup>84</sup> Carol Thompson, *Army Corps extends Line 5 tunnel review, delaying project at least 18 months*, THE DETROIT NEWS (Mar. 23, 2023), <https://www.detroitnews.com/story/news/local/michigan/2023/03/23/army-corps-extends-line-5-tunnel-review-delaying-project-18-months/70017972007/>.

<sup>85</sup> See Compl., *Enbridge v. Whitmer*, 1:20-cv-01141-JTN-RSK (W.D. Mich. Nov. 24, 2020) (Dkt. 1) (opposing Governor’s order to close pipeline); see also Beth LeBlanc, *Enbridge says it won’t comply with easement revocation, plans to continue operating Line 5*, THE DETROIT NEWS (Jan. 12, 2021), <https://www.detroitnews.com/story/news/local/michigan/2021/01/12/enbridge-not-comply-easement-revocation-continue-line-5-operation/6630978002/>.

A growing chorus of U.N. bodies and experts have recognized the grave environmental and human rights risks of Line 5's continued operation.

The U.N. Permanent Forum on Indigenous Issues recognized in its 22nd session report in April 2023 that Line 5 “jeopardizes the Great Lakes” and “presents a real and credible threat to the treaty-protected fishing rights of Indigenous Peoples in the United States and Canada.”

Accordingly, the Permanent Forum “recommend[ed] that Canada and the U.S. decommission Line 5.”<sup>86</sup> The Forum renewed this recommendation in its 23rd session report in April 2024, stating “[t]he Permanent Forum reiterates that the Enbridge Line 5 oil pipeline jeopardizes the Great Lakes and poses a real and credible threat to the human rights of Indigenous Peoples in Canada and the United States. The Forum reiterates its call for Canada and the United States to decommission Line 5.”<sup>87</sup>

The U.N. Special Rapporteur on the Rights of Indigenous Peoples recognized in his July 2023 country report on Canada that “[t]he transportation of crude oil and liquid natural gas by Canadian-owned Enbridge is creating the risk of a catastrophic oil spill that could contaminate the lands and waters of Indigenous Peoples on both sides of the border.” Accordingly, the Special Rapporteur recommended that Line 5 cease operations until the free, prior, and informed consent of affected Indigenous communities is obtained.<sup>88</sup> The Special Rapporteur also stated that prolonging the operations of Line 5 “is inconsistent with [Canada’s] international commitments to prevent and mitigate the effects of climate change by phasing out fossil fuels.”<sup>89</sup>

The U.N. Committee on the Elimination of Racial Discrimination issued an early warning and action letter to the government of Canada in December 2023, expressing concern that the “continued operations of Line 5 and the risk of an oil spill could cause a disproportionate harm to the Anishinaabe Indigenous Peoples, to their way of life and to the right to their lands, resources, culture, health, and could also cause their forced displacement. . . [the Committee] is further concerned at the reported lack of consultations with affected Indigenous communities and lack of respect of the principle of free, prior and informed consent of these communities with regard to Line 5 pipeline.”<sup>90</sup>

## **II. EDC’s Human Rights Responsibilities as Applied to Transactions with Enbridge**

### **A. EDC must assess and manage human rights risks in its transactions and customer relationships.**

---

<sup>86</sup> United Nations Permanent Forum on Indigenous Issues, Report on the Twenty-Second Session (17-28 April 2023), E/2023/43-E/C.19/2023/7, para. 65.

<sup>87</sup> United Nations Permanent Forum on Indigenous Issues, Permanent Forum on Indigenous Issues: Report on the twenty-third session (15-26 April 2024), Advance Unedited Version, para. 35, [https://social.desa.un.org/sites/default/files/Webpage\\_Advance\\_Unedited-Version\\_UNPFII\\_2024\\_clean.pdf](https://social.desa.un.org/sites/default/files/Webpage_Advance_Unedited-Version_UNPFII_2024_clean.pdf).

<sup>88</sup> Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, A/HRC/54/31/Add.2, paras. 70-71, 96(i) (July 24, 2023).

<sup>89</sup> *Id.*, para. 71.

<sup>90</sup> United Nations Committee on the Elimination of Racial Discrimination, Early Warning and Action Letter to the Government of Canada, CERD/EWUAP/111th Session/2023/MJ/CS/ks, p. 2 (Dec. 8, 2023).

EDC's policies recognize that export credit agencies must respect human rights across their operations.<sup>91</sup> Accordingly, EDC has developed a Human Rights Policy and a Due Diligence Framework, as part of its broader Environmental Social Risk Management (ESRM) Policy Framework, which govern its approach to respecting human rights.<sup>92</sup> These policy frameworks apply across EDC operations and customer relationships,<sup>93</sup> and are applicable to EDC's customer relationship and transactions with Enbridge.

These policy frameworks are designed to ensure EDC's operations are "consistent with Canadian law which embeds the international commitments made by Canada."<sup>94</sup> Canada's international commitments include ratification of seven major international human rights treaties,<sup>95</sup> international climate agreements,<sup>96</sup> and endorsement of the Universal Declaration on the Rights of Indigenous Peoples (UNDRIP), which the Canadian government signed into law.<sup>97</sup> As Canada's export credit agency, EDC's conduct is attributable to Canada.<sup>98</sup> EDC is a wholly government owned "agent of the Crown,"<sup>99</sup> meaning that Canada is "fully liable and financially exposed for all [of EDC's] actions and decisions."<sup>100</sup> Accordingly, EDC's actions must conform to Canada's international obligations. This includes the obligation to respect human rights, which requires States refrain from directly or indirectly causing or contributing to reasonably foreseeable harms to human rights.<sup>101</sup> When States have a business role – including through State agencies such as export credit agencies – the obligation to respect human rights prohibits them from investing public finances and other resources in business activities that violate human rights.<sup>102</sup> To meet Canada's obligation to respect human rights, and to comply with its policy to

---

<sup>91</sup> EDC, Human Rights Policy, version 2.0, p. 3 (Oct. 2022) [hereinafter "EDC, Human Rights Policy"]

<sup>92</sup> EDC, Human Rights Policy; EDC, Due Diligence Framework: Human Rights, version 5.0 (Feb. 2024) [hereinafter "EDC, Human Rights DD Framework"]; EDC, Environmental and Social Risk Management Policy, version 4.0 (Oct. 2022).

<sup>93</sup> See EDC, Human Rights Policy at p. 1.

<sup>94</sup> *Id.* at p. 2.

<sup>95</sup> See Government of Canada, *Reports on United Nations Human Rights Treaties* (July 12, 2022), <https://www.canada.ca/en/canadian-heritage/services/canada-united-nations-system/reports-united-nations-treaties.html>.

<sup>96</sup> *E.g.*, United Nations Framework Convention on Climate Change, 9 May 1992, 1771 U.N.T.S. 107 (ratified by Canada on 4 Dec. 1992) [hereinafter "UNFCCC"]; Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, 3156 U.N.T.S. (ratified by Canada on 5 Oct. 2016) [hereinafter "Paris Agreement"].

<sup>97</sup> United Nations Declaration on the Rights of Indigenous Peoples, 13 Sept. 2007, U.N. Doc. A/RES/61/295 [hereinafter "UNDRIP"] (endorsed by Canada in 2016 and given application in Canadian law in 2021); see Government of Canada, *The Declaration Explained* (June 21, 2022), <https://www.justice.gc.ca/eng/declaration/what-quoi.html>.

<sup>98</sup> See Committee on Economic, Social, and Cultural Rights (CESCR), *General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, E/C.12/GC/24, paras. 15, 50 (2017) [hereinafter "CESCR, GC No. 24"] (referring to export credit agencies as a form of State support); CRC, GC No. 16, para. 26 (referring to export credit agencies as State agencies).

<sup>99</sup> EDC, *Risk and weighting*, <https://www.edc.ca/en/investor-relations/risk-weighting.html> (last visited Aug. 6, 2024).

<sup>100</sup> Government of Canada, *Agent status and Crown corporations*, <https://www.canada.ca/en/treasury-board-secretariat/services/guidance-crown-corporations/agent-status-crown-corporations.html> (last visited Aug. 6, 2024).

<sup>101</sup> See Human Rights Committee (HRC), *General Comment No. 36 on Article 6: right to life*, CCPR/C/GC/36, paras. 7, 63 (2019) [hereinafter "HRC, GC No. 36"]; Human Rights Committee on the Rights of the Child (CRC), *General comment No. 16 on State obligations regarding the impact of the business sector on children's rights*, CRC/C/GC/16, para. 26 (2013) [hereinafter "CRC, GC No. 16"].

<sup>102</sup> See CRC, GC No. 16, paras. 27 ("The obligation to respect also implies that a State should not engage in, support or condone abuses of children's rights when it has a business role itself or conducts business with private enterprises. . . . States should not invest public finances and other resources in business activities that violate children's rights."), 45(c) ("Measures to prevent the infringement of children's rights by business enterprises when they are operating

act consistently with Canada’s international law commitments, EDC must therefore refrain from transactions that cause or contribute to reasonably foreseeable harms to human rights.

EDC also aligns its policy frameworks with the U.N. Guiding Principles on Business and Human Rights (UNGPs) and other international best practices regarding responsible business conduct.<sup>103</sup> Under the UNGPs, businesses – including export credit agencies – should avoid causing or contributing to adverse human rights impacts, take necessary measures to cease such impacts when they occur, and use their leverage to mitigate any remaining impacts.<sup>104</sup> Businesses should also seek to prevent or mitigate adverse human rights impacts that are directly linked to their activities through their business relationships, including through exercising leverage over the entity causing harm.<sup>105</sup> To meet its international law and policy commitments, EDC therefore must not cause or contribute to human rights violations through its transactions, and must use its leverage to mitigate adverse impacts that it is connected to through its customer relationships.

As mandated by the UNGPs, EDC’s policy frameworks provide a due diligence process to assess and monitor human rights risks and the customer’s management of those risks throughout the transaction process and ongoing customer relationship.<sup>106</sup> First, EDC identifies Severe Human Rights Impacts, paying particular attention to harms affecting certain groups, including Indigenous Peoples.<sup>107</sup> Then, EDC assesses the customer’s ability to manage adverse impacts and its leverage to prevent and mitigate actual or potential Severe Human Rights Impacts.<sup>108</sup> EDC uses this information to evaluate whether to enter – or exit – a customer relationship, considering the severity of actual or potential harm and the company’s willingness to work constructively with EDC to manage risks or improve practices.<sup>109</sup>

These diligence requirements are not limited to financing decisions but exist throughout the customer relationship. Where severe human rights risks are identified, EDC must continue to monitor human rights performance and the customer’s risk management throughout the relationship “to ensure [EDC] can act when impacts are not effectively managed.”<sup>110</sup> As stated above, this assessment should inform EDC’s decision making about present and future support to the customer, including whether EDC has a responsibility to exit the customer relationship.

**B. EDC’s human rights obligations and commitments are incompatible with financing to Enbridge that supports Line 5.**

---

abroad include: . . . Ensuring that State agencies with a significant role regarding business, such as export credit agencies, take steps to identify, prevent and mitigate any adverse impacts the projects they support might have on children’s rights before offering support to businesses operating abroad and stipulate that such agencies will not support activities that are likely to cause or contribute to children’s rights abuses.”).

<sup>103</sup> EDC, Human Rights Policy at p. 2.

<sup>104</sup> United Nations Guiding Principles on Business and Human Rights (UNGP), princips. 13(a), 19 (commentary pp. 21-22), 22 (2011).

<sup>105</sup> UNGP, princips. 13(b), 19 (commentary pp. 21-22).

<sup>106</sup> EDC, Human Rights Policy at p. 3.

<sup>107</sup> *Id.* at p. 4.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at p. 5.

<sup>110</sup> *Id.*

Line 5 adversely affects a variety of human rights that EDC and Canada have committed to uphold, including the right to a healthy environment,<sup>111</sup> cultural rights,<sup>112</sup> and the right to free, prior, and informed consent (FPIC) for projects affecting them and their territories.<sup>113</sup>

For Indigenous Peoples, the right to a healthy environment and cultural rights are intertwined. As set out by the U.N. Human Rights Committee, whose authority is accepted by the Canadian government, “in the case of [I]ndigenous [P]eoples, the enjoyment of culture may relate to a way of life which is closely associated with territory and the use of its resources, including such traditional activities as fishing or hunting. . . . Article 27 . . . enshrines the inalienable right of [I]ndigenous [P]eoples to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity.”<sup>114</sup> Cultural rights are woven throughout UNDRIP, which recognizes, among others, rights to practice, revitalize, and protect cultural customs, ceremonies, heritage, traditional knowledge, traditional cultural expressions, and traditional medicines.<sup>115</sup> UNDRIP also affirms the right of Indigenous peoples to their territories and lands, and the right to protect them,<sup>116</sup> therefore making caretaking of the environment part of the minimum standards for their survival, dignity, and well-being.

The threat that Line 5 poses to the rights to a healthy environment and Indigenous Peoples’ cultural rights are severe. EDC defines “Severe Human Rights Impacts” as those that are “particularly grave in nature,” widespread in scope,” or “cannot be remediated (e.g. . . . destruction of indigenous peoples’ lands).”<sup>117</sup> As described above, Line 5 poses a real risk of a catastrophic oil spill that would devastate the Great Lakes and the communities, species, and landscapes they sustain. These impacts are widespread, threatening to contaminate more than 375,000 acres of land and wetlands, 450 lakes, and thousands of kilometers of shorelines and rivers – jeopardizing access to drinking water for more than 48 million people. For Indigenous communities in the Great Lakes region, the harm from a spill cannot be remediated; Anishinaabe Peoples have an irreplaceable relationship with the species, resources, lands, and waters that make up the ecosystem of interconnected relationships in the Great Lakes region that are at the heart of Indigenous identity. Destruction of, or harm to, this ecosystem from a catastrophic spill would prevent Indigenous communities from practicing their culture and spirituality, and would prevent them from passing on traditions – with impacts for generations to come.

---

<sup>111</sup> HRC, GC No. 36, arts. 26, 62; CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the ICESCR)*, E/C.12/2000/4, paras. 4, 11, 15, 27, 34 (2000); UNDRIP art. 29(1).

<sup>112</sup> Numerous treaties protect cultural rights, e.g., International Covenant on Economic, Social and Cultural Rights art. 15(1), Dec. 16, 1966, 993 U.N.T.S. 3; International Covenant on Civil and Political Rights, art. 27, Dec. 16, 1966, 999 U.N.T.S. 171, including the cultural rights of Indigenous Peoples, UNDRIP, arts. 11, 12, 24, 31.

<sup>113</sup> UNDRIP, art. 32(2); *See Expert Mechanism on the Rights of Indigenous Peoples, Free, Prior and Informed Consent: a Human Rights-Based Approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples*, U.N. Doc. A/HRC/39/62 (2018).

<sup>114</sup> *See HRC, Daniel Billy et al. v. Australia*, U.N. Doc. CCPR/C/135/D/3624/2019, para. 8.13; accord CESCR, *General comment no. 21: Right of everyone to take part in cultural life (art. 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/21, paras. 36-37 (2009) [hereinafter “CESCR, GC No. 21”].

<sup>115</sup> UNDRIP, arts. 11, 12, 24, 31.

<sup>116</sup> UNDRIP, art. 29.

<sup>117</sup> EDC, Human Rights Policy at p. 17.

Support for Line 5 is also incompatible with EDC's and Canada's climate obligations and commitments, which include winding down reliance on fossil fuels. As a party to both the UNFCCC and Paris Agreement, Canada has committed to take measures to limit warming to pre-industrial levels, including by aligning its financial flows with a pathway towards low greenhouse gas emissions.<sup>118</sup> Canada has stated that this commitment applies to EDC.<sup>119</sup> Any EDC financing to Enbridge that directly or indirectly supports Line 5 is in direct contradiction to this obligation. As described above, Line 5's upstream and downstream greenhouse gas emissions amount to approximately 87 million metric tons of carbon dioxide equivalent annually, and Enbridge is attempting to extend Line 5's life through new projects and by fighting court orders to decommission sections of the pipeline. The U.N. Special Rapporteur on the Rights of Indigenous Peoples recognized that prolonging the operations of Line 5 "is inconsistent with [Canada's] international commitments to prevent and mitigate the effects of climate change by phasing out fossil fuels."<sup>120</sup>

The pipeline's continued operation also violates Indigenous Peoples' right to FPIC, which guarantees their right to give or withhold consent "prior to the approval of any project affecting their lands or territories and other resources."<sup>121</sup> Indigenous Peoples' right to FPIC is continuous; "consent must be ongoing with express opportunities for review and renewal," and can be revoked.<sup>122</sup> Specifically, FPIC is required for extractive industry projects within the territories of Indigenous Peoples and/or projects with a significant, direct impact on Indigenous Peoples,<sup>123</sup> for instance, "when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk."<sup>124</sup> EDC must ensure its customers obtain FPIC when Indigenous communities are affected by projects it finances,<sup>125</sup> in accordance with its commitment to follow the IFC Performance Standard on Indigenous Peoples.<sup>126</sup> EDC should also respect the principle of FPIC in non-project transactions, in accordance with its commitment to uphold Canada's human rights obligations<sup>127</sup> and as a state actor whose conduct is attributable to Canada.<sup>128</sup> As laid out above, affected Indigenous communities have not provided their consent to Line 5 and are calling for the pipeline to be decommissioned. Nor have they provided their

---

<sup>118</sup> Paris Agreement art. 2.1(c); see UNFCCC, art. 2; Paris Agreement, art. 2.1(a).

<sup>119</sup> *Canada's Submission to the UNFCCC's Standing Committee on Finance on Ways to Achieve Article 2.1c of the Paris Agreement*, pp. 1-3 (July 2023) ("Governments at all levels must support the implementation of Article 2.1c by establishing the necessary enabling conditions required for actors to align financial flows with low carbon, climate-resilient development. This includes supporting Paris Alignment of financial flows within and across state-owned organizations such as Crown Corporations.").

<sup>120</sup> Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, A/HRC/54/31/Add.2, para. 71, 96(i) (July 24, 2023).

<sup>121</sup> UNDRIP, art. 32(2).

<sup>122</sup> *Expert Mechanism on the Rights of Indigenous Peoples, Free, Prior and Informed Consent: a Human Rights-Based Approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples*, U.N. Doc. A/HRC/39/62, para. 43 (2018). See also, *id.* paras. 15, 50, & Annex, para. 6; Food and Agriculture Organization of the U.N., *Free Prior and Informed Consent: An Indigenous Peoples' Right and a Good Practice for Local Communities*, page 13 (2016), <https://www.fao.org/3/i6190e/i6190e.pdf>.

<sup>123</sup> *Expert Mechanism on the Rights of Indigenous Peoples, Free, Prior and Informed Consent: a Human Rights-Based Approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples*, U.N. Doc. A/HRC/39/62, paras. 31-35 (2018).

<sup>124</sup> CESCR, GC No. 21, para. 55(e).

<sup>125</sup> EDC, Human Rights Policy at p. 20; EDC, Human Rights DD Framework at p. 3.

<sup>126</sup> International Finance Corporation, Performance Standard 7: Indigenous Peoples, version 2.0, pp. 3-5 (2012).

<sup>127</sup> EDC, Human Rights Policy at p. 2.

<sup>128</sup> See CESCR, GC No. 24, paras. 15, 50; CRC, G.C. No. 16, para.

consent for Enbridge’s proposed new projects to extend Line 5. Thus, as the U.N. Special Rapporteur on the Rights of Indigenous Peoples has recognized, violations of Indigenous Peoples’ right to FPIC have already occurred and remain ongoing.<sup>129</sup>

Enbridge has failed to manage these risks effectively or provide remedy where human rights violations have occurred. As described above, Enbridge has continued operating the pipeline despite credible evidence of the grave risks and widespread opposition to Line 5, including calls by international bodies and experts for Line 5 to be decommissioned, and serious concerns raised by U.S. federal, state, and Tribal government entities. Where the pipeline crosses Tribal and state lands without legal permission, Enbridge is fighting in U.S. courts to prevent the offending sections from being shut down. Moreover, Enbridge has proposed new environmentally risky projects rather than decommission the pipeline. The company’s pattern of safety violations and spills of other Enbridge pipelines further indicate inadequate human rights risk management.

Given the severity of the human rights and environmental risks of Line 5 and Enbridge’s inadequate response, support to Enbridge that enables Line 5’s continued operations is inconsistent with both EDC’s and Canada’s human rights obligations and commitments. As laid out above, EDC must not directly or indirectly cause or contribute to, or be directly linked to, human rights violations.<sup>130</sup> If Enbridge uses EDC financing or working capital solutions for Line 5, then EDC is directly or indirectly contributing to the violations.<sup>131</sup> Any such support is contrary to the calls from U.N. bodies and experts for Canada to cease support for or decommission Line 5 due to the pipeline’s threats to the rights of Indigenous Peoples and climate impacts, which are inconsistent with Canada’s human rights and climate commitments.<sup>132</sup> Even if EDC’s transactions with Enbridge are not directly or indirectly tied to Line 5, EDC is still directly linked to the pipeline’s human rights impacts through its customer relationship with Enbridge – which EDC recognizes as the source of its greatest risk of being connected to severe human rights impacts<sup>133</sup> – and must use its leverage to mitigate the human rights violations and risks.<sup>134</sup>

### **III. Recommendations and Requests**

EDC must take corrective action to ensure that its transactions and relationship with Enbridge are consistent with Canada’s and its own human rights obligations and policy commitments.

First, EDC should assess its connection to the Line 5 pipeline through its transactions with Enbridge. If EDC identifies that Enbridge has used or could use any financial or other resources provided by EDC to support Line 5, EDC must take appropriate measures to address the pipeline’s severe human rights impacts. For example, EDC could condition its support to prevent Enbridge from directly or indirectly using EDC resources to enable Line 5’s continued operation,

---

<sup>129</sup> Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, A/HRC/54/31/Add.2, paras. 70-71, 96(i) (July 24, 2023).

<sup>130</sup> See HRC, GC No. 36, paras. 7, 63; CRC, GC No. 16, para. 26; UNGP, principls. 13, 19, 22.

<sup>131</sup> See CRC, GC No. 16, paras. 27, 45(c).

<sup>132</sup> See Section I.E., *supra*.

<sup>133</sup> EDC, Human Rights Policy at p. 1.

<sup>134</sup> See UNGP principls. 13(b), 19.

and EDC could refrain from future transactions with Enbridge. We request a statement from EDC regarding whether its financing, working capital, and/or other solutions have been or could be used to directly or indirectly support Line 5. We also request a description of any corrective actions that EDC takes.

Second, given EDC's direct link to Line 5's adverse impacts through its relationship with Enbridge, EDC should use its leverage to address the pipeline's adverse impacts. EDC should require that Enbridge cease the proposed tunnel project, Wisconsin reroute, and any other new Line 5 projects until it obtains FPIC from affected Indigenous communities. EDC should also require that Enbridge decommission Line 5 until the company obtains affected Indigenous communities' FPIC. Additionally, given Enbridge's inadequate management of human rights risks, EDC should reevaluate its customer relationship with Enbridge, including by considering whether it should exit the relationship.

Third, EDC should comprehensively assess the human rights and environmental impacts of Line 5 as part of its ongoing due diligence process. We recommend that EDC engage with Indigenous communities affected by Line 5 and human rights organizations as part of this process. The Bay Mills Indian Community would welcome consultation with EDC. We also request a written explanation of how Line 5's human rights and environmental impacts were assessed in EDC's due diligence process for the recently-approved loan renewal to Enbridge on July 23, 2024.

Thank you for your consideration of the issues detailed in this submission. We look forward to your response.

Chi miigwetch (thank you),



Whitney B. Gravelle,

President, Bay Mills Indian Community