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STATE OF WISCONSIN
COUNTY OF DANE
BEFORE THE DANE COUNTY BOARD OF SUPERVISORS

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In re Appeal of the Decision of the Dane County Zoning and Land Regulation Committee and the Town of Medina Board of Supervisors Approving with Conditions Conditional Use Permit No. 2291

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**NOTICE OF APPEAL AND APPEAL**

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TO: Dane County Board of Supervisors
210 Martin Luther King, Jr. Blvd.
Madison, Wisconsin 53703,

Dane County Zoning and Land Regulation Committee
210 Martin Luther King, Jr. Blvd.
Madison, Wisconsin 53703,

Dane County Zoning Administrator
210 Martin Luther King, Jr. Blvd.
Madison, Wisconsin 53703,

Town of Medina Board of Supervisors
405 East Main Street
Marshall, Wisconsin 53559.

PLEASE TAKE NOTICE that Enbridge Energy Company and Enbridge Energy, Limited Partnership (collectively "Enbridge"), individually and as agent for Wisconsin Electric Power Company ("WEPCO"), by its attorneys Whyte Hirschboeck Dudek, S.C., hereby appeals to the Dane County Board of Supervisors, pursuant to Dane County Code of Ordinances, Section 10.255(2)(j), the decision of the Dane County Zoning and Land Regulation Committee ("ZLR Committee") dated April 14, 2015 and the April 20, 2015 decision of the Town of Medina Board of Supervisors ("Town"), approving with conditions Conditional Use Permit No. 2291 ("CUP"),

which CUP became effective April 21, 2015. The grounds for this appeal and the reasons why Enbridge is aggrieved by the decision are stated herein.

## STATEMENT OF FACTS

1. Enbridge is an interstate liquid pipeline company with its principal offices located at 1100 Louisiana, Suite 3300, Houston, Texas 77002-5217. Enbridge is licensed to do business in Wisconsin. Enbridge is a lessee of, and an easement owner on, land owned by WEPCO and is the agent for WEPCO for purposes of this appeal.

2. Enbridge is the owner of the Lakehead System, the United States portion of an operationally integrated interstate pipeline consisting of over 3,400 miles of pipeline, which transports crude oil from western Canada to the eastern United States, over a distance of approximately 1,900 miles.

3. Pursuant to the Pipeline Safety Act ("PSA"), 49 U.S.C. § 60101(a)(4)(A), crude oil is a hazardous liquid. As an operator of an interstate hazardous liquid pipeline, Enbridge is regulated by the PSA, 49 U.S.C. § 60101, *et seq.*, and attendant administrative regulations promulgated by the United States Department of Transportation, Pipeline Hazardous Material Safety Administration ("PHMSA"), 49 C.F.R. Part 195.

4. In 2007-08, as part of its Southern Access Expansion Project, Enbridge installed a 42-inch outer-diameter liquid petroleum pipeline ("Line 61"), which originates in Wisconsin at the Enbridge Superior Tank Farm and Terminal Facility in Douglas County, Wisconsin, and extends to the Wisconsin/Illinois border for a total of 343 miles in Wisconsin. Line 61 was installed to meet the capacity needs for crude oil by Midwest refineries to meet the demand of petroleum producers and users.

5. Enbridge currently leases land from WEPCO on which it has constructed a pump station consisting of a pump house, switch gear building and related above and below ground

piping, appurtenances and assorted equipment. Pursuant to the July 8, 1996 Station Site Lease with WEPCO, Enbridge is required to obtain all state and local permits required for the pump station. The pump station is known as the Waterloo Pump Station and is located in the Town of Medina, Dane County, Wisconsin.

6. As part of its Mainline Expansion Project to increase the capacity of Line 61 from 400,000 bpd to 1.2 million bpd without the need for construction and installation of one or more new pipelines from the Superior Terminal to the Illinois border, Enbridge acquired an easement from WEPCO for purposes of expanding the Waterloo Pump Station to increase pumping capacity. Pursuant to the Easement Agreement, Enbridge is required to acquire all zoning or re-zoning permits needed for the expanded Waterloo Pump Station.

7. On April 23, 2014, Enbridge, on its own behalf as lessee and easement holder for the existing and expanded Waterloo Pump Station, and as agent for WEPCO, applied for a zoning permit for purposes of constructing a 15,352 square foot pump station and related appurtenances and improvements at the Waterloo Pump Station location.

8. On April 29, 2014, Dane County Zoning Permit No. DCPZP-2014-00199 was issued to WEPCO by the Dane County Zoning Division for "pumping station new construction and improvements" at the Waterloo Pump Station ("Zoning Permit"). On April 30, 2014, as agent for WEPCO, Enbridge signed the Zoning Permit agreeing to comply with all Dane County ordinances.

9. On June 12, 2014, the Dane County Board of Supervisors adopted a resolution urging the Wisconsin Department of Natural Resources ("DNR") to prepare a new Environmental Impact Statement ("EIS") for Line 61 and to revoke the air permit the DNR had already issued for the expansion of storage tank capacity at Enbridge's Superior Terminal,

located in Douglas County, Wisconsin, as part of the Line 61 Mainline Expansion Project. That same day, June 12, 2014, Dane County Zoning Administrator Roger Lane issued a letter to Enbridge revoking the Zoning Permit and contending that the Waterloo Pump Station expansion and improvement was not a permitted land use but rather that it required a conditional use permit. The letter stated: "Upon further review, in consultation with Dane County's Corporation Counsel's Office, we have determined that the permit for the Enbridge pump house issued on April 30, 2014, was issued prematurely. We have concluded that your proposed use is not a permitted use, and that a conditional use permit (CUP) is instead required. Please be advised that Zoning Permit No. DCPZP-2014-00199 is hereby revoked." As indicated, the notice of revocation was issued the same day that the Dane County Board of Supervisors adopted its resolution urging the DNR to revoke the air permit the DNR had already issued for the storage tank capacity expansion portion of the Line 61 Mainline Expansion Project.

10. On August 19, 2014, Enbridge, as lessee and easement owner of the Waterloo Pump Station and as agent for WEPCO, filed a CUP application for the work to be performed at the Waterloo Pump Station. The Waterloo Pump Station expansion and improvement included the installation of four new 6,000 horsepower electric pumps to be constructed adjacent to the existing station. The proposed expansion at the Enbridge Waterloo Pump Station site is designed in conformance with PHMSA design and safety requirements to ensure that it will not be detrimental to the general public welfare. The expanded and improved Waterloo Pump Station will be monitored 24 hours a day from a state of the art control center, and multiple on-site fire/vapor detectors and pressure transmitters are employed to promptly initiate remote shutdown and isolation, if needed. It was designed with an impervious liner and berming composed of clay

or geosynthetics. Berms are built according to Enbridge specifications and regulatory requirements to contain released hydrocarbons on the Waterloo Pump Station property.

11. The Waterloo Pump Station property is already being utilized for multiple pipeline and utility purposes. A large American Transmission Company ("ATC") distribution substation and the existing Enbridge Waterloo Pump Station are currently located at the existing pump station site and are of the same use as the expansion pump station facility. By building an additional pump station on the existing pump station site, and co-locating with other utility uses, Enbridge has maximized its existing facilities to the greatest extent possible, thereby minimizing the impacts to the surrounding neighbors and land uses. The fact that Enbridge's proposed expansion and improvements to the Waterloo Pump Station are compatible with the neighboring agricultural uses has been demonstrated based on the nearly 20 years that Enbridge has had an existing pump station at the Waterloo Pump Station site.

12. The planned expansion and improvements to the Waterloo Pump Station based on state of the art construction methods and techniques, and advanced state of the art safety operations and maintenance protocols will not increase the risk of an oil release in the area.

13. The Town initially approved the CUP on October 1, 2014 with two conditions. Those conditions required: (1) "A signed agreement between the Town of Medina & Enbridge for use of Town of Medina Roads" and (2) "A spill basin sized at a minimum 60 minute flow."

14. The ZLR Committee held a public hearing on Enbridge's CUP permit application on October 28, 2014, and the ZLR Committee postponed action on the application. During several subsequent meetings, the ZLR Committee continued to postpone action on Enbridge's CUP application.

15. During the pendency of its CUP application, and to address safety concerns raised by interested citizens, Enbridge agreed to install an oversized release basin at the Waterloo Pump Station expansion site sized at a minimum 60-minute flow. Enbridge agreed that noise associated with operations at the site will be below 50 dBA at the Waterloo Pump Station property line and agreed that exterior lighting shall be down-shrouded to limit light pollution onto adjoining property.

16. Enbridge agreed to provide Dane County the resources necessary to hire a local engineering firm to represent the County and landowners during construction of the pump station. Enbridge proposed that such firm would provide an independent opinion to the County and the neighboring landowners that Enbridge was constructing the containment liner to applicable specifications.

17. Enbridge notified the ZLR Committee that it carries Comprehensive General Liability Insurance ("CGL"), which includes coverage for Sudden and Accidental Pollution Liability, a coverage that provides protection in the event of a release that is "Sudden and Accidental" and discovered within thirty (30) days of the release.

18. Enbridge also provided the ZLR Committee notice that currently $1.4 billion in funds are available through the Oil Spill Liability Trust Fund administered by the U.S. Coast Guard under the U.S. Department of Homeland Security, pursuant to the Oil Pollution Act, 33 U.S.C. §§ 2701 *et seq.* The insurance consultant to the ZLR Committee also concluded that the current total balance in the fund exceeds $4 billion, and the fund balance is expected to increase by $300 million annually. The money in the Oil Spill Liability Trust Fund is dedicated to providing compensation to claimants for removal costs or damages resulting from an oil spill that threatens waters, including wetlands, intermittent streams, ditches, creeks, shorelines and

tributaries. It is available if Enbridge does not fully respond to a release with its financial resources being used for required remediation , which has never happened. The Oil Spill Liability Trust Fund is funded through excise taxes on crude oil received at U.S. refineries and on petroleum products entered into the United States for consumption, use or warehousing. It is not funded by general taxpayer dollars.

19. On April 14, 2015, the ZLR Committee granted Enbridge a CUP for the expansion and improvements at the Waterloo Pump Station. However, as a condition to the CUP, the ZLR Committee required Enbridge to purchase and maintain for the life of the Waterloo Pump Station an additional Environmental Impairment Liability Policy ("EIL") with coverage limits of $25,000,000. As an additional condition to the CUP, the ZLR Committee required Enbridge to procure and maintain CGL coverage of $100,000,000: (a) from an insurance company "with an A.M. Bests rating of at least A, XII;" (b) with a self-retention limited to $1 million for both the EIL and the CGL coverage; (c) that required certain notices from the insurance carriers; and (d) that required Enbridge to waive its subrogation rights, among other conditions. (The two insurance requirements will be referred to individually as the "EIL Requirement" and the "CGL Requirement" and collectively as the "Insurance Requirements.") Accordingly, Enbridge cannot construct the expansion and improvements on the Waterloo Pump Station site that will be operated in full compliance with personal, property and environmental safety requirements under federal law unless and until it complies with the Insurance Requirements.

20. The Town approved the CUP with the Insurance Requirements on April 20, 2015, and the CUP became effective on April 21, 2015.

21. The only materially salient difference between the EIL and the CGL policies is that CGL coverage is available to indemnify Enbridge for costs related to a release if the release is discovered within thirty (30) days, whereas EIL coverage would be available to Enbridge regardless of the amount of time that passes between the start of the release and its discovery. With Enbridge's state of the art monitoring technology, the chance that a release that would cause environmental damage exceeding Enbridge's CGL limits would not be discovered within 30 days is virtually non-existent. While the EIL policy expressly covers clean-up costs, restoration costs and natural resources damages, the CGL policy covers those costs through its property damage indemnification requirements.

22. The Insurance Requirements are personal, property and environmental safety requirements. They were purportedly imposed as a condition to the CUP to ensure that "the conditional use will not be detrimental to or endanger the public health, safety, comfort or welfare." Dane County Zoning Ordinance 10.255(2)(h). The insurance consultant to the ZLR Committee explained that the EIL Requirement is a pipeline safety regulation because the insurance industry would not renew the EIL policy annually unless it was sure that the safety of the Waterloo Pump Station and Line 61 was not at risk. He stated that it allowed the ZLR Committee, along with the insurance industry, to act in a "quasi-regulatory role" over Enbridge's operation and maintenance of the Waterloo Pump Station and Line 61.

23. Since 2012, Enbridge has invested $4.4 billion to ensure the integrity and safety of its pipelines and pipeline facilities. These investments include:

- Continued enhancements and technological investments in Enbridge's control center, where trained technicians monitor pressure and flow on all Enbridge lines, including Line 61. The control center is empowered to shut down any line in the event of an emergency or any indeterminate circumstances that might be an emergency.

- Increased inspections of Enbridge's pipelines, with recently developed and highly sophisticated instruments that perform inspections inside the pipeline and through foot and aerial patrols.
- Increased monitoring and remote shut-down capabilities built into any new or upgraded pipelines.
- Enhanced corrosion prevention for the exterior of Enbridge's pipelines, through improved pipe coatings and cathodic protection.
- Improved pipeline design and engineering.
- More frequent interaction and training with emergency responders, including table-top and field drills, informational briefings and status reports, and face-to-face meetings.

24. Enbridge's continued goal is zero incidents and Enbridge has always paid any clean-up costs required to remediate consequences from an oil release before being reimbursed by its insurers. No Wisconsin taxpayer or landowner funds have been required to clean up and remediate any Enbridge oil release that has occurred in Wisconsin. The insurance consultant to the ZLR Committee concluded that, in terms of financial resources available to fund operational costs, Enbridge has an available cash flow between $900 million and $960 million on an annual basis from its ongoing operations.

25. Numerous government studies have found pipelines are the safest method of delivering petroleum products. Domestic refiners' demand for increasing amounts of secure and reliable oil from North American sources and the latest technology has enabled producers to access more crude oil. Until or unless more pipeline capacity is available to deliver the oil to refiners, including the Waterloo Pump Station enhancement and improvements, alternative and lesser safe modes of transportation have been and will continue to be sought.

26. Enbridge is committed to full compliance, and it is in compliance, with federal pipeline safety regulations, and its own safety and integrity programs, which meet or exceed regulatory requirements. If Enbridge were subject to a patchwork of personal, property and environmental safety requirements deemed appropriate by each of the scores of towns, municipalities and counties through which its lines pass and its pipeline facilities are constructed, such as the Insurance Requirements, there would be a substantial risk of inconsistent safety related obligations, and consequently, overall pipeline safety likely might suffer, and the incremental cost to the consumer for petroleum products would outweigh any potential benefit from those requirements. Such a patchwork of safety requirements threatens the uniformity and consistency of interstate liquid pipeline regulation, which is expressly and preemptively under the authority of the PSA and the PHMSA.

27. Without the expansion and improvements to the Waterloo Pump Station, the annual average capacity resulting from the Line 61 Mainline Expansion Project will be reduced from 1.2 million bpd to approximately 890,000 bpd. The annual revenue losses by Enbridge that will be caused by the reduction in pipeline capacity will be substantial. In addition, the adverse impacts to the interstate pipeline system as a whole from the reduction in the capacity of this critical infrastructure upgrade will be substantial.

## GROUNDS FOR APPEAL

28. The exclusive standards that the ZLR Committee and the Town were authorized to apply to Enbridge's conditional use permit application are set forth in Chapter 10 of the Dane County Code of Ordinances, and particularly in Section 10.255(2)(h) thereof. Section 10.255(2)(h) allows the ZLR Committee to impose conditions only on the following bases:

a. That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare;

b. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use;

c. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;

d. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;

e. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and

f. That the conditional use shall conform to all applicable regulations of the district in which it is located.

29. The ZLR Committee's and the Town's decisions to grant the CUP with the Insurance Requirements were purportedly based on the need to ensure that the expansion of, and improvement to, the Waterloo Pump Station "will not be detrimental to or endanger the public health, safety, comfort or general welfare." However, the Insurance Requirements were not based on the merits of the application, nor were they based upon the relevant standards contained in the Dane County Code of Ordinances. Rather, the decisions were based on policy or political considerations that exceeded the ZLR Committee's and the Town's jurisdiction, were the result of the application of erroneous legal standards, as described below, and were not based on

substantial evidence in the record. Consequently, the decisions were arbitrary, oppressive and unreasonable, representing the ZLR Committee's and the Town's will and not their judgment.

30. The ZLR Committee's and the Town's decisions should be reversed because, as described below:

a. The ZLR Committee and the Town did not make a decision on Enbridge's CUP application "within a reasonable time" after Enbridge filed its application on August 19, 2014, as required by Dane County Ordinance § 10.255(2)(b);

b. The ZLR Committee and the Town did not keep within their jurisdiction, which was solely to determine whether the proposed Waterloo Pump Station was compatible with the surrounding land uses;

c. The ZLR Committee and the Town lacked the authority to require Enbridge to comply with the Insurance Requirement as a condition to obtaining a CUP;

d. The ZLR Committee and the Town proceeded on one or more incorrect theories of law;

e. The ZLR Committee's and the Town's decisions were arbitrary, oppressive and unreasonable and represented their will and not their judgment; and

f. The ZLR Committee and the Town did not reasonably make the decision to attach the Insurance Requirements as a condition to the CUP based on the evidence before them.

The ZLR Committee's and the Town's decisions should also be reversed for the following additional reasons.

**A. The Insurance Requirements Are Preempted By The PSA, 49 U.S.C. § 60101, *et seq.* And The PHMSA, 49 C.F.R. Part 195, Under The Supremacy Clause, U.S. Const., Art. VI, cl. 2.**

31. The requirements for the operation, maintenance, inspection and safety of interstate pipelines are fully governed by the PSA, 49 U.S.C. § 60101, *et seq.*, and the regulations adopted by the PHMSA, 49 C.F.R. Part 195.

32. Congress enacted the PSA expressly "to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities." 49 U.S.C. § 60102(a)(1).

33. The PSA was amended in 2006 "to provide for enhanced safety and environmental protection in pipeline transportation...." PL-109-468, 120 Stat. 3486. "The safety standards to protect the environment" included under the PSA "expand ... federal regulation of interstate hazardous liquid pipelines and thus [are] consistent with federal preemption." *Kinley Corp. v. Iowa Utilities Bd.*, 99 F.2d 354, 360 (8th Cir. 1993).

34. The Insurance Requirements attached by the ZLR Committee and the Town are an obstacle to the accomplishment of the full purposes and objectives of Congress to fully occupy and regulate the operation, maintenance, inspection and personal, property and environmental safety of interstate pipelines.

35. The Insurance Requirements attached by the ZLR Committee and the Town are personal, property and environmental safety standards applicable to Enbridge's interstate pipeline facility and the transportation of crude oil associated with such facility and are expressly preempted by federal law.

36. The Insurance Requirements are hazardous liquid pipeline safety requirements in that they seek to ensure that County residents will be compensated in the event a release at an expanded and improved Waterloo Pump Station or on Line 61, which was not part of the CUP application, that causes damages to private property or the environment or injuries to County residents. The Insurance Requirements also conflict with and frustrate the purpose of the federal regulatory scheme. The Waterloo Pump Station cannot be expanded and improved and thereafter operated unless Enbridge complies with the Insurance Requirements. Thus, the County is shutting down the expanded operations of Line 61 not only in Dane County but on an interstate basis unless Enbridge complies with the Insurance Requirements. "This is exactly the type of piecemeal regulation that the [PSA] ... seek[s] to avoid with the establishment of a consistent, across-the-board regulatory scheme [under the PSA]." *Tx. Oil & Gas Ass'n. v. City of Austin, Tex.*, No. 03-CA-570-SS (WD Tex.), Order Nov. 7, 2003, ECF No. 25 at *7.

37. If Enbridge were subject to a patchwork of personal, property and environmental safety requirements deemed appropriate by each of the scores of towns, municipalities and counties through which its lines pass and its pipeline facilities are constructed, such as the Insurance Requirements, there would be a substantial risk of inconsistent safety related obligations, overall pipeline safety likely might suffer, and the incremental cost to the consumer for petroleum products would outweigh any potential benefit from those requirements. Such a patchwork of safety requirements threatens the uniformity and consistency of hazardous liquid pipeline regulation, which is expressly and preemptively under the authority of the PSA and the PHMSA.

38. In accordance with the Supremacy Clause, U.S. Const., Art VI, cl. 2, the Insurance Requirements are preempted by the PSA, 49 U.S.C. § 60101, *et seq.*, and the

regulations adopted by the PHMSA, 49 C.F.R. Part 195, including but not limited to, 49 C.F.R. §§ 195.401(b)(1), 195.402(a), and 195.452(a)-(h).

39. The ZLR Committee and the Town imposed the Insurance Requirements "to protect public health, safety, comfort or general welfare" and as an express safety regulation with the ZLR Committee, the Town and the insurance industry acting in a quasi-regulatory capacity over the safety of Enbridge's operation and maintenance of the Waterloo Pump Station and Line 61 in direct conflict with the PSA, 49 U.S.C. § 60101, *et seq.* and the regulations adopted by the PHMSA, 49 C.F.R. Part 195. Moreover, the Insurance Requirements are not necessary to protect the public health, safety, comfort or general welfare, and the ZLR Committee and the Town have no valid basis under Dane County Code of Ordinances, Section 10.255(2)(h), for imposing the Insurance Requirements.

**B. The Insurance Requirements Violate The Interstate Commerce Clause, U.S. Const., Art. I, § 8, co. 3.**

40. The Commerce Clause of the United States Constitution provides that Congress shall have "Power ... to regulate Commerce ... among the several States." U.S. Const., Art. I, § 8, cl. 3.

41. On information and belief, the ZLR Committee and the Town have not required any other in-state entity to agree to a requirement similar or identical to the Insurance Requirements as a condition attached to a CUP.

42. On information and belief, the ZLR Committee and the Town have only required Enbridge, an interstate liquid pipeline company, to agree to requirements similar or identical to the Insurance Requirements as a condition attached to a CUP.

43. The Insurance Requirements are facially discriminatory against Enbridge's interstate pipeline operations, and, therefore, violate the Commerce Clause, U.S. Const., Art I, § 8, cl. 3.

44. Even if the Insurance Requirements are not facially discriminatory, they impose an undue burden on interstate commerce by regulating Enbridge's expansion of, and improvements to, the Waterloo interstate pipeline Pump Station to prevent the enhancement of the Waterloo Pump Station and increased capacity of Line 61 if Enbridge cannot comply with the Insurance Requirements. The burden imposed on interstate commerce is excessive in relation to the putative local benefits and, thus, violates the Commerce Clause, U.S. Const., Art. I, § 8, cl. 3. Dane County and its residents are adequately protected by the PSA and the PHMSA's regulatory safety requirements, Enbridge's current CGL insurance coverage, the Oil Spill Liability Trust Fund, the Wisconsin Spills Law, Wis. Stat. § 292.11(3), (6) and (7), and Enbridge's history of paying, and commitment to pay, all costs associated with a release from its pipelines and facilities before being reimbursed by its insurers.

**C. Enbridge Is Aggrieved By The Insurance Requirements.**

45. If the expansion and improvements to the Waterloo Pump Station are not completed due to the Insurance Requirements, the Line 61 Mainline Expansion annual average capacity will be reduced from 1.2 million bpd to approximately 890,000 bpd. The capacity reduction will result in substantial annual lost revenue to Enbridge and an even more substantial revenue loss in the aggregate during the operation of Line 61.

46. The annual cost of Enbridge complying with the Insurance Requirements for the Waterloo Pump Station and Line 61 will be substantial, and the aggregate cost during the operation of Line 61 would be even more substantial. The cost for Enbridge to comply with similar or identical requirements as those set forth in the Insurance Requirements imposed by all

towns, municipalities and counties where Enbridge pipelines and facilities are located would be prohibitive.

47. Without the expansion of, and improvements to, the Waterloo Pump Station, Enbridge will be unable to meet the projected capacity needs of its petroleum producing customers and their end users. In addition, the adverse impacts to the interstate pipeline system as a whole from the reduction in the capacity of this critical infrastructure upgrade will be substantial.

48. The balance of harm tips entirely in favor of not requiring Enbridge to comply with the terms of the Insurance Requirements. Dane County is adequately protected by the PSA and the PHMSA's regulatory safety requirement, Enbridge's current CGL insurance coverage, the Oil Spill Liability Trust Fund, the Wisconsin Spills Law, Wis. Stat. § 292.11(3), (6) and (7), Enbridge's history of paying any costs associated with a release from its pipelines and facilities before being reimbursed by its insurers, and the remaining conditions attached to the CUP.

49. Because the Insurance Requirements are preempted by the PSA, 49 U.S.C. § 60101, *et seq.*, and the PHMSA regulations, 49 C.F.R. Part 195, and because Enbridge will be prevented from increasing the capacity of its facilities through the expansion and improvements to the Waterloo Pump Station without complying with the Insurance Requirements, Enbridge will be irreparably harmed and aggrieved by the Insurance Requirements.

WHEREFORE, Enbridge respectfully requests that the Dane County Board of Supervisors:

A. Find that the Insurance Requirements are preempted by the PSA, 49 U.S.C. § 60101, *et seq.*, and the PHMSA regulations, 49 C.F.R. Part 195 and, therefore, that the ZLR

Committee and the Town did not keep within their jurisdiction, applied an incorrect theory of law and acted arbitrarily and unreasonably by requiring Enbridge to comply with the Insurance Requirements as a condition to the CUP;

B. Find that the Insurance Requirements violate the Interstate Commerce Clause and, therefore, that the ZLR Committee and the Town did not keep within their jurisdiction, applied an incorrect theory of law and acted arbitrarily and unreasonably by requiring Enbridge to comply with the Insurance Requirements as a condition to the CUP;

C. Reverse the ZLR Committee's and the Town's decision to impose the Insurance Requirements as a condition to the CUP on the grounds that the ZLR Committee and the Town did not: (1) act within a "reasonable time" on Enbridge's CUP application; (2) keep within their jurisdiction, which was solely to determine if the expansion of the Waterloo Pump Station was compatible with existing land uses in the area; (3) applied incorrect rules of law; and (4) acted arbitrarily and unreasonably by requiring Enbridge to comply with the Insurance Requirements as a condition to the CUP, and, therefore, rule that the Insurance Requirements are void and modify the CUP by removing the Insurance Requirements.

Dated this 4th day of May, 2015.

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