

Michigan Governor Whitmer's Pipeline Move Declares War on Aviation

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For nearly a month, Enbridge, Inc., a Canadian oil and gas pipeline company, has been operating its Line 5 pipeline

in defiance of an order from Michigan Governor Gretchen Whitmer to shut down Line 5's operations effective May 12, 2021. The pipeline, which runs 1,083 kilometers from northern Wisconsin through Michigan to Sarnia, Ontario, Canada, was built in 1953 and carries approximately 500,000 barrels a day of oil and natural gas liquids from western Canadian refineries.

Governor Whitmer claims that the pipeline, which crosses the Straits of Mackinac, is a "ticking time bomb" posing a grave threat to Michigan's environment and economy. She asserts that its continued use violates a 1953 easement agreement between Canada and the State of Michigan.

Whitmer's predecessor as Michigan Governor, Rick Snyder, reached an agreement with Canada in 2018 for building a tunnel within the bedrock of the Straits and then installing a new section of the pipeline inside that tunnel. Governor Whitmer, who came into office in 2019, could not reach agreement with Enbridge on timelines for that work to proceed.

Now she demands that Enbridge cease using the pipeline altogether.

Should Line 5 cease operations, even temporarily, the effects on both American and Canadian aviation specifically would be enormous. In turn, the secondary socio-economic impacts for both countries would be significant, but potentially devastating for Canada.

Its aviation industry has arguably suffered much more than in the United States from the long siege of the COVID pandemic.

Toronto's Lester Pearson International Airport, Canada's largest airport serving Canada's biggest, wealthiest, and arguably most important city, receives 100% of its jet fuel from Line 5. Potentially initially, but possibly also for some considerable period of time, it might have to cease operating entirely – or at least substantially curtail them - if Line 5 were to suddenly close.

Detroit Metropolitan Wayne County International Airport obtains

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50% of its jet fuel from Line 5. Detroit's economy, already on a long downward trend over many decades, would struggle to fully recover.

Line 5 also feeds into Enbridge's Line 9, which provides feedstock to refineries in Quebec. Those refineries, in turn, produce jet fuel for airports in Montreal and Quebec City, who also might see their services curtailed.

While perhaps not suffering impacts as harsh as in Toronto and Detroit, the impacts of a Line 5 shut down on aviation in those cities would still be significant for their regions, and for Canada as a whole.

Predictably, the actions by Governor Whitmer have provoked outrage in Canada, including within the Liberal Party led by Prime Minister Justin Trudeau that controls the Canadian Parliament.

Ironically, the party stands on a platform of staunch liberalism when it comes to matters of the environment generally. Yet on May 12, 2021, the Trudeau led government took the highly unusual step of intervening in a United States court proceeding in the Western District of Michigan by filing a legal brief in which it asserted that the

shutdown

is unlawful and constitutes a threat to Canada's energy and environmental security.

Shutting down Line 5 is "non-negotiable," according to Canadian National Resources Minister Seamus O'Reagan, who worked with Canadian Provincial Ministers on the American legal filing.

Among other points opposing Governor Whitmer's action, that filing expressly invoked the 1977 Transit Pipeline Treaty between the two countries that prevents either side from interfering with energy transshipments through the other's territory. That 1977 Treaty was ratified by, among others, then Senator Joseph Biden.

Canada's legal brief was direct: "The United States undertook a solemn and reciprocal commitment to Canada...not to interfere with the operations of international hydrocarbon transit pipelines. That obligation, with

legally binding effect under international law, expressly applies to any measures instituted by a 'public authority in the territory of either party' — including the State of Michigan and this court..."

The disruption would not be limited to the large hub airports and also to aviation. According to the *Detroit Free Press*, "Detroit and Ohio refineries served by Line 5 send about 23,000 barrels of jet fuel daily to Ontario by rail, according to a 2017 report from the U.S. Energy Information Administration — some of which could arguably get diverted to Detroit Metropolitan Airport if a Line 5 shutdown creates the jet fuel pinch some expect." Still, that would not be nearly enough to cover the combined needs of Detroit Metropolitan Airport and other airports in Michigan.

Canada's aviation issues would be even more pronounced. While Montreal's Pierre Trudeau International Airport and Quebec City's Jean Lesage International Airport may have potential alternative sources for jet fuel, Toronto likely does not.

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It is estimated that to

make up for the loss of the pipeline, Ontario would need to add a massive 2,000 trucks or 500 rail cars going one-way ***each day***.

The bulk of those would not be used for jet fuel. Putting aside the potential secondary impacts of having that many vehicles transporting highly flammable fuel over long distances on a daily basis, including but certainly not limited to the excess greenhouse emissions, without that fuel at its largest hub, Canadian aviation, already battered by the coronavirus and lacking the federal assistance provided In the United States, would suffer yet another massive hit.

The Line 5 situation is another case of externalities not contemplated by policy makers as they make their decisions. This is not just the law of unintended consequences.

It is the inability to truly think through the results of any governmental action.

It is doubtful that Governor Whitmer thought much about aviation when she ordered Line 5 closed.

However, should any of the above described impacts occur, she will have to deal with those issues, as well as any other consequences.

Were this not a different country being affected, one wonders what the FAA and United States airlines would say if they were to wake up and suddenly find out that half of the jet fuel to one of the country's most important airports is suddenly gone. At the very least, they now must plan for these scenarios as the pipeline wars continue unabated.

ATTORNEYS MENTIONED

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