

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Rockies Express Pipeline, LLC : Docket No. CP07-208-000
 : CP07-208-001**

**REQUEST FOR REHEARING
SUBMITTED ON BEHALF OF
THE OHIO POWER SITING BOARD**

June 30, 2008

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I. Introduction

Pursuant to Section 19 of the Natural Gas Act, 15 U.S.C. § 717r (2006), and Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or Commission), 18 C.F.R. § 385.713 (2007), the Ohio Power Siting Board (OPSB) respectfully requests rehearing of the Commission's May 30, 2008 Order in the above captioned proceeding on the three limited issues discussed below. That order conditionally grants a certificate of public convenience and necessity authorizing applicant Rockies Express to construct and operate a natural gas transmission pipeline and related facilities from Audrain County, Missouri east to Monroe County, Ohio, a distance of approximately 639 miles. In Ohio, the proposed pipeline will extend approximately 235 miles from the western border of Ohio, Butler County to Monroe County located near the eastern border of the State.

II. Brief Statement of Issues

The OPSB respectfully submits that the Commission's May 30, 2008 Order erred in the following respects:

1. The May 30, 2008 Order Issuing Certificate erred in failing to accept the OPSB's proposed alternative route for crossing the Big Darby Creek State and National Scenic River. (See Attachment A, Big Darby Creek Alternate)
2. The May 30, 2008 Order Issuing Certificate erred in failing to accept the OPSB's proposed alternative route for crossing the Little Miami State and National Scenic River. (See Attachment B, Little Miami River Alternate)
3. The May 20, 2008 Order Issuing Certificate erred by failing to adequately address contingency plans (frac-out contingency plans) that should be in place for the Big Darby, Little Miami and other Ohio water crossings in the event the proposed horizontal directional drilling (HDD) or other crossings permitted by the May 30, 2008 Order are not safely completed.

III. Background

A. OPSB Has Successfully Intervened And Filed Comments In This Proceeding

The OPSB has previously sought and been granted intervention by the Commission in this proceeding and on January 14, 2008, it filed lengthy comments on behalf of the Ohio state agencies that comprise the OPSB.¹ These comments were filed by the OPSB as combined comments regarding the concerns of the six agencies listed below in an attempt to present their wide and varied issues in one document so as to assist the FERC staff in the review of this complex matter in an efficient manner and to avoid duplicity of comments in certain areas. The OPSB's combined comments outlined environmental and other concerns and proposed a number of measures, including alternative pipeline routing where needed, to mitigate impacts of the proposed 42-inch

¹ The OPSB is a seven member board comprised of the Chair of the Public Utilities Commission of Ohio, the Directors of the Ohio Environmental Protection Agency, the Ohio Department of Health, the Ohio Department of Development, the Ohio Department of Natural Resources, the Ohio Department of Agriculture and a public representative.

natural gas pipeline in and through Ohio. Specifically, OPSB's comments recommended that the Commission authorize alternative pipeline locations to minimize impacts to the rare ecosystems found at the proposed crossings of the Big Darby Creek State Scenic and National Wild and Scenic River (the Big Darby) and the Little Miami State Scenic and National Wild and Scenic River (the Little Miami). The OPSB's proposed alternative routes would add 5.8 miles at the Big Darby crossing and 12.3 miles at the Little Miami crossing to the project route.

Although the OPSB is generally pleased with the efforts of the FERC staff as reflected in the Final EIS and the Commission's May 30, 2008 order and accompanying conditions, the OPSB nonetheless believes that the Commission's order falls short of adequately addressing Rockies Express' routing proposals for the Big Darby and the Little Miami. The OPSB has proposed alternative routes that would impact smaller areas and would be far less environmentally and ecologically intrusive to these water bodies and their respective ecosystems. Stated in the positive, the FERC has before it an exceptional opportunity to minimize potentially devastating degradation to two of Ohio's most significant biological systems. In addition, the OPSB feels that the May 30, 2008 order fails to require an adequate frac-out contingency plan necessary to attempt to minimize environmental damage in the event of an HDD or other water crossing failures at the Big Darby, Little Miami or other Ohio bodies of water.

B. Importance Of The Big Darby And The Little Miami Ecosystems

The Big Darby and Little Miami have been recognized as outstanding aquatic ecosystems and are among the most ecologically productive and sensitive freshwater ecosystems in Ohio. The Big Darby in Pickaway County, Ohio and the Little Miami in

Warren County, Ohio are designated as “Scenic Rivers” by the State of Ohio and as “Wild and Scenic Rivers” by the U.S. Department of the Interior. To achieve such designations a creek or river must meet extensive criteria, including exceptional water quality and high biological diversity. It must also contain rare and endangered species as well as having a contiguous riparian forest corridor; exceptional stream morphology/habitat; limited floodplain development; and valuable recreational resource and aesthetic qualities.

In addition, governmental agencies, on the federal, state, and local levels, have all taken great care to ensure the continued integrity of both the Big Darby and the Little Miami. For example, because the Big Darby watershed is among the most biologically diverse stream systems of its size in the Midwest, the Ohio Environmental Protection Agency’s (Ohio EPA) water quality regulations assign the most stringent aquatic life use designations (Exceptional Warmwater Habitat and Coldwater Habitat) and the outstanding state water antidegradation category to many of the larger streams in the Big Darby watershed.(Ohio Admin. Code 3745-1-09 and 3745-1-05). Further, in order to protect this unique resource, the Ohio EPA has developed an alternative general permit for storm water associated with construction activity specifically for the Big Darby watershed. (NPDES Permit OHC00001). The Big Darby watershed has a Total Maximum Daily Load (TMDL) which was developed by Ohio pursuant to Ohio law and Section 303 of the Clean Water Act. The Big Darby TMDL was approved by U.S. EPA, March 31, 2006. A major issue in the Big Darby TMDL related to the interaction between ground water and surface water and the function that ground water serves in providing surface water flow in periods of low flow.

The Ohio Department of Natural Resources (ODNR) has invested approximately \$2.4 million in the protection of approximately 1,000 acres of riparian corridor throughout the Big Darby watershed. The Big Darby is also protected by various land use plans developed and adopted by multiple local governments working together such as the Big Darby Planning Accord in western Franklin County which includes the City of Columbus and its suburbs. Likewise, The Nature Conservancy has designated the Big Darby as one of the "10 Last Great Places in the Western Hemisphere" and has through its actions, protected approximately 1,000 acres of land in the Big Darby headwaters.

Similarly, the Little Miami, in addition to joining the Big Darby as a designated a State Scenic and a National Wild and Scenic River, has been designated by the Ohio EPA as an Exceptional Warmwater Habitat, a State Resource Water, and a Sole Source Aquifer. The ODNR has invested approximately \$1.6 million in riparian corridor conservation throughout Little Miami watershed and is currently working with local stakeholders to develop a National Scenic River Management Plan to protect the Little Miami. In addition, several counties and townships have adopted river protection zoning overlays to protect the Little Miami's floodplains and riparian corridor from development and the private, nonprofit environmental group Little Miami Incorporated has been working to protect the river since 1968.

IV. Argument

The OPSB respectfully requests that the Commission grant a rehearing to reconsider the authorized routes for crossing the Big Darby and Little Miami. It continues to be the OPSB's position that the alternate routes it has proposed are both reasonable and viable alternatives. Further, the OPSB renews its argument that HDD

crossings should be avoided where a reasonable alternative exists. Although, when successful, the HDD method is considered safer to streams and rivers than some other methods of crossing, in the event of failure or frac-out, the impacted waterbody is subject to serious environmental distress. As stated in OPSB's January 14, 2008 comments, any HDD crossing presents an elevated risk of harm to aquatic species as well as water quality and habitat degradation.

In Paragraph 76 of the May 30, 2008 order, the Commission notes that the Final EIS evaluated ten major route alternatives in an attempt to determine if impacts on environmentally sensitive resources could be avoided or reduced. Paragraph 76 then states that the alternative routes for eight sites including the Big Darby and the Little Miami "...do not offer clear environmental advantages over the proposed route" and that Rockies Express will not be required to implement the alternatives.

Paragraph 131 of the May 30, 2008 order indicates that comments expressed concern regarding the use of HDD or microtunneling methods to cross the Little Miami and Big Darby due to geologic features at the two locations. The Commission stated that

[i]n order to provide the option of avoiding the waterbodies, Environmental Conditions 66 and 67 require that Rockies Express successfully complete the HDD or microtunnel crossing of the Little Miami River prior to constructing between MPs 432.0 and 467.2 and successfully complete the HDD or microtunnel crossing of the Big Darby Creek prior to constructing between MPs 494.1 and 533.9

(May 30 Order, paragraph 131) (emphasis added).² To be sure, the OPSB supports any option that would avoid these two waterbodies, however, the "option" the Commission

² The OPSB is also mindful that Environmental Conditions 94, 95, 102 and 103 provide that, if trenchless crossing of the Big Darby and Little Miami fail, alternative construction shall not begin until the plans are approved by the Commission and additional conditions are met.

provides simply does not do enough to protect these two rare aquatic systems. It is the HDD process or microtunneling itself that places these rivers at the greatest risk.³ The fact that the Commission mandates that construction of pipeline between certain mileposts may only follow the success of HDD or microtunneling beneath the Big Darby and Little Miami does not adequately address the reality that HDD failure or microtunneling failure may result in grave harm to these rivers' ecosystems.

A. The Commission's May 30, 2008 Order Issuing Certificate Erred In Failing To Accept The OSPB's Proposed Alternative Route For The Big Darby Creek Crossing

In the case of the Big Darby, there is a reasonable alternative that would allow Rockies Express to completely avoid this body of water. The OPSB continues to believe that this is an exceptional opportunity to minimize the potential for degradation to one of Ohio's most significant biological systems.

On June 5, 2008, following issuance of the May 30, 2008 order, Rockies Express representatives met with ODNR staff to discuss the HDD method for boring under the Big Darby. Under the currently approved plan, Rockies Express plans to bore underneath the Big Darby at a depth of approximately 40 feet. This would skirt just across the top of the bedrock surface underneath the Big Darby.

Subsequent to this meeting with Rockies Express representatives and upon further review of the geology at the proposed HDD entry and exit points, the ODNR submitted a June 12, 2008 letter to Kimberly D. Bose, Secretary of the Commission. This letter, a copy of which is attached hereto as Attachment C, discusses the geology at the Big Darby

³ As noted in the June 12, 2008 letter to Kimberly D. Bose, Secretary to the Commission from the ODNR, discussed below, danger of environmental damage comes from the "possibility of drilling fluids traveling from the horizontal drill hole to the surface."

crossing location approved by the May 30, 2008 order in the second full paragraph of the second page. That paragraph states, in pertinent part, that

[t]he tunnel crossing at Big Darby Creek will be in unconsolidated gravel, sand, silt and clay and the tunnel boring will be a depth of 40 feet beneath the creek. Borings taken on the west side of the proposed crossing route indicate the existence of boulders and cobbles immediately above the bedrock surface. Boulders at the bedrock-unconsolidated material interface are common and can impede drilling. Borings on the east side of the crossing show the absence of boulders, but these small samples do not preclude the presence of boulders from the east side. Therefore, boulders should be anticipated where the tunnel is close to bedrock which is directly underneath the Big Darby Creek. The possibility of drilling fluids traveling from the horizontal drill hole to the surface is greatest at the tunnel entry and exit far away from the creek. However, the possibility of rapid and unpredictable change in lithology both vertically and horizontally over short distances across the buried valley affords the possibility of porous and permeable sand, gravel and cobble-rich strata being present and acting as a conduit to the surface. Variability of the sediment layers at these crossings make the travel of drilling mud to the surface beneath the body of water difficult to predict, but any measure that would limit the possibility is a reasonable goal.

(emphasis added). This letter from the ODNr stresses that the geology at the proposed Big Darby crossing may serve to frustrate HDD success. If the HDD project at the Big Darby is defective, serious ecological ramifications could result. OPSB continues to have significant concerns about the risk of HDD failure or frac-out and because of these significant concerns, the OPSB requests that the Commission direct Rockies Express to avoid the Big Darby altogether.

The OPSB, in this request for rehearing, implores the Commission not to gamble with the Big Darby where a reasonable alternative route exists, as evidenced by the

Commission's Final EIS. Table 3.4.9-1 of the Final EIS, lays out an environmental comparison of the project route and the alternative route recommended by the OPSB. The Commission found that the alternative route adds only 5.8 miles to the project route, "maximizes length along existing rights-of-way and crosses one less waterbody," and avoids more forested and residential land than the project route.⁴ Where the project route crosses 2.2 miles of Deer Creek State Park and is projected to cause "long term impacts to forested areas," (Final EIS, 3-31), the Commission states that the alternative avoids the state park altogether. The OPSB concurs with these assessments and is left to wonder why the project route was ultimately approved.

In explanation, the Final EIS stated, "[a] successful HDD would not disturb the banks, vegetation, or water quality of the creek, and would protect the scenic values of the river." (Final EIS, 3-31) (emphasis added). To be sure, avoiding disturbance of the banks, vegetation, water quality and scenic value of the Big Darby is a worthy goal. However, an HDD failure could have disastrous effect on these elements of the Big Darby that so many have been working to protect. On rehearing, the Commission should ensure that this goal is met by approving the reasonable alternative route and missing this prized natural resource altogether.

B. The Commission's May 30, 2008 Order Issuing Certificate Erred In Failing To Accept The OSPB's Proposed Alternative Route For The Little Miami Crossing

With regard to the Little Miami, also discussed at the June 5, 2008 meeting between ODNr staff and representatives of Rockies Express, the OPSB renews its requests that an alternative that avoids Caesar's Creek State Park and that crosses the

⁴ The Commission states that "the alternative route avoids 0.1 mile of forested land crossed and almost 0.1 mile of residential land crossed."

Little Miami below the reservoir be authorized by the Commission as the preferred route. This route would avoid any impacts to the state park. The June 12, 2008 letter from ODNR to Secretary Bose, discusses the geology at the approved Little Miami crossing. Beginning in the last paragraph of the first page of that letter, it is indicated that ODNR's staff found that the approved Little Miami location consists of "...bedrock valleys partially or completely infilled with unconsolidated sediments (gravel, sand, silt, and clay), glacial till, and glacio-fluvial and lacustrine sediments." This June 12 letter also indicates that, according to a tunnel cross-section shared by Rockies Express, a crossing of the Little Miami at the point proposed by Rockies Express, "will be almost entirely in bedrock and reach a depth of approximately 200 feet beneath the . . . river." ODNR geologists found that unconsolidated sediments exist near the surface at both the tunnel entry and exit points.

As stated in the OPSB's comments to the Draft EIS (Jan. 14, 2008 comments, at pages 12-13) and supported by a presentation by Rockies Express' representatives on June 5, the OPSB does not seek a determination by the Commission that a HDD crossing of the Little Miami should be totally prohibited. Instead, the OPSB respectfully requests that the Commission reconsider only the point at which the Little Miami is crossed by means of HDD. The alternative crossing previously proposed by OPSB would transverse the Little Miami at a location which is currently more disturbed than Rockies Express' proposed location. This would also mean fewer tributaries and ravines would be crossed, ultimately resulting in the removal of less riparian corridor. Further, the OPSB's proposed crossing avoids portions of Caesar Creek and the Caesar Creek State Park, one of the busiest state parks in Ohio.

C. The Commission Erred As It Failed To Adequately Address Contingency Plans (Frac-Out Contingency Plans) That Should Be In Place For The Big Darby, Little Miami And Other Ohio Water Crossings In The Event The Proposed Horizontal Directional Drilling Or Other Crossings Described In The May 30, 2008 Order Are Not Safely Completed

The May 30, 2008 Order lacks explicit requirements upon Rockies Express regarding their preparedness to quickly react in the event of an HDD or other water crossing failure. It is requested that a rehearing be granted to address this important issue.

The above discussion establishes that, to ensure the environmental integrity of the Big Darby and Little Miami, the Commission should amend its May 30, 2008 order to require the proposed alternative routes be used regarding the Big Darby and the Little Miami. In the event the Commission does not issue such an amendment, the Order should be amended to require in-depth contingency plans (frac-out contingency plans) in an attempt to minimize the potentially disastrous impact to the eco-systems of the Big Darby and the Little Miami should there be a failure during the HDD process. In addition, such contingency plans should also be required for the additional water crossing locations in the State of Ohio.

At a minimum, the plans should include round-the-clock water body monitoring and stop-work procedures in the event of a frac-out; required on-site frac-out response equipment and personnel; documentation of resulting damage and successful remedial action necessary prior to any re-start of drilling activities following a frac-out; and compensation should a frac-out result in adverse impacts.

V. **Contacts**

Contact persons regarding this filing are:

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Assistant Attorney General
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Public Utilities Section
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william.wright@puc.state.oh.us

Attorney for the Ohio Power Siting Board

Attorney for the Ohio Power Siting Board

VI. **Conclusion**

Based upon the foregoing, the Ohio Power Siting Board respectfully requests that the Federal Energy Regulatory Commission grant rehearing as to matters described above.

Respectfully Submitted,
Nancy H. Rogers
Attorney General of Ohio

s/Margaret A. Malone
Margaret A. Malone(0021770)
Assistant Attorney General(#F174484)
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30 East Broad Street, 25th Floor
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Attorney for the
Ohio Power Siting Board

Proof of Service

I hereby certify that the foregoing have been served in accordance with 18 C.F.R. Sec. 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

s/ Margaret A. Malone
Margaret A. Malone
Assistant Attorney General

Dated at Columbus, Ohio this June 30, 2008.

final

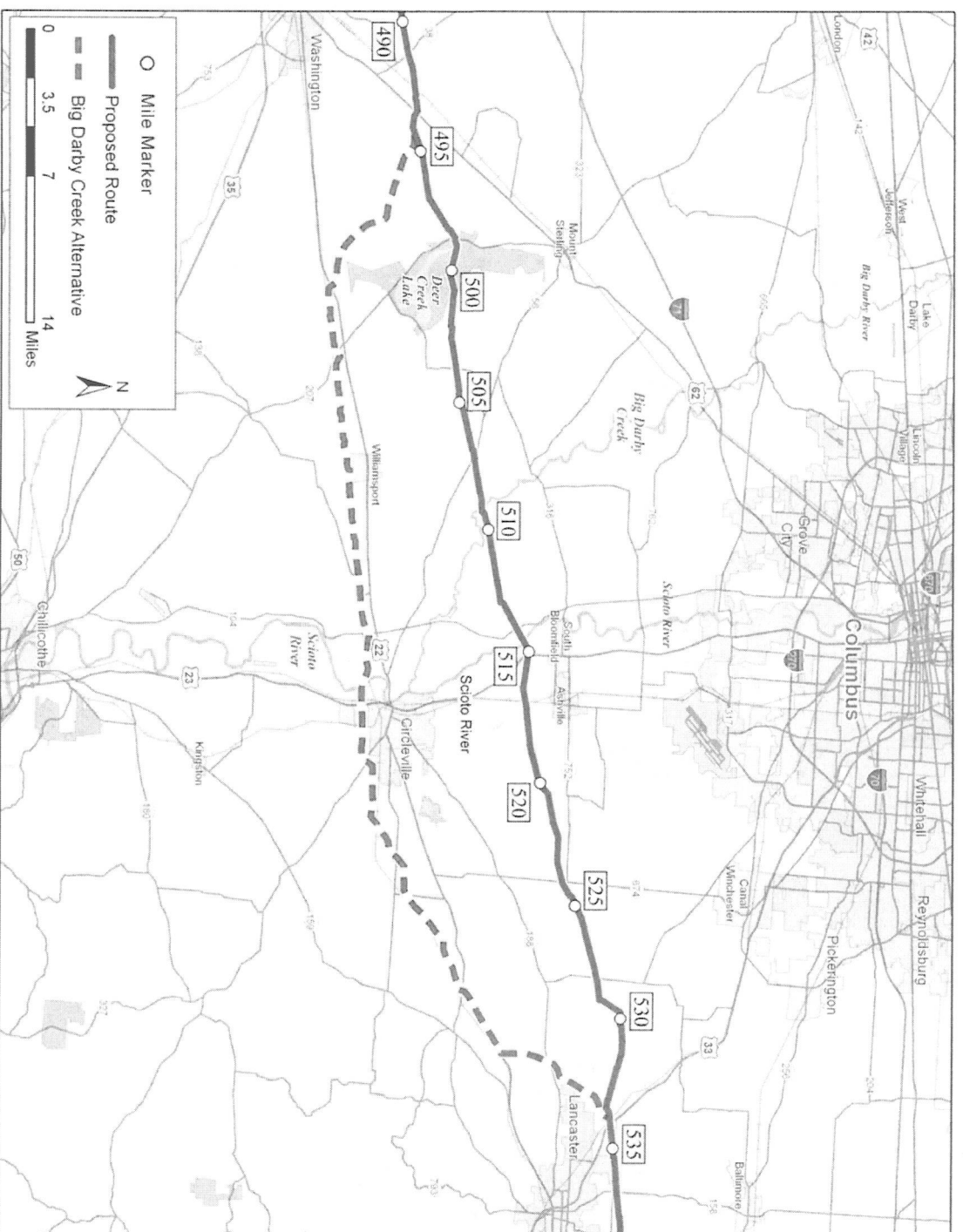


Figure 3.4.9-1
Big Darby Creek Route Alternative

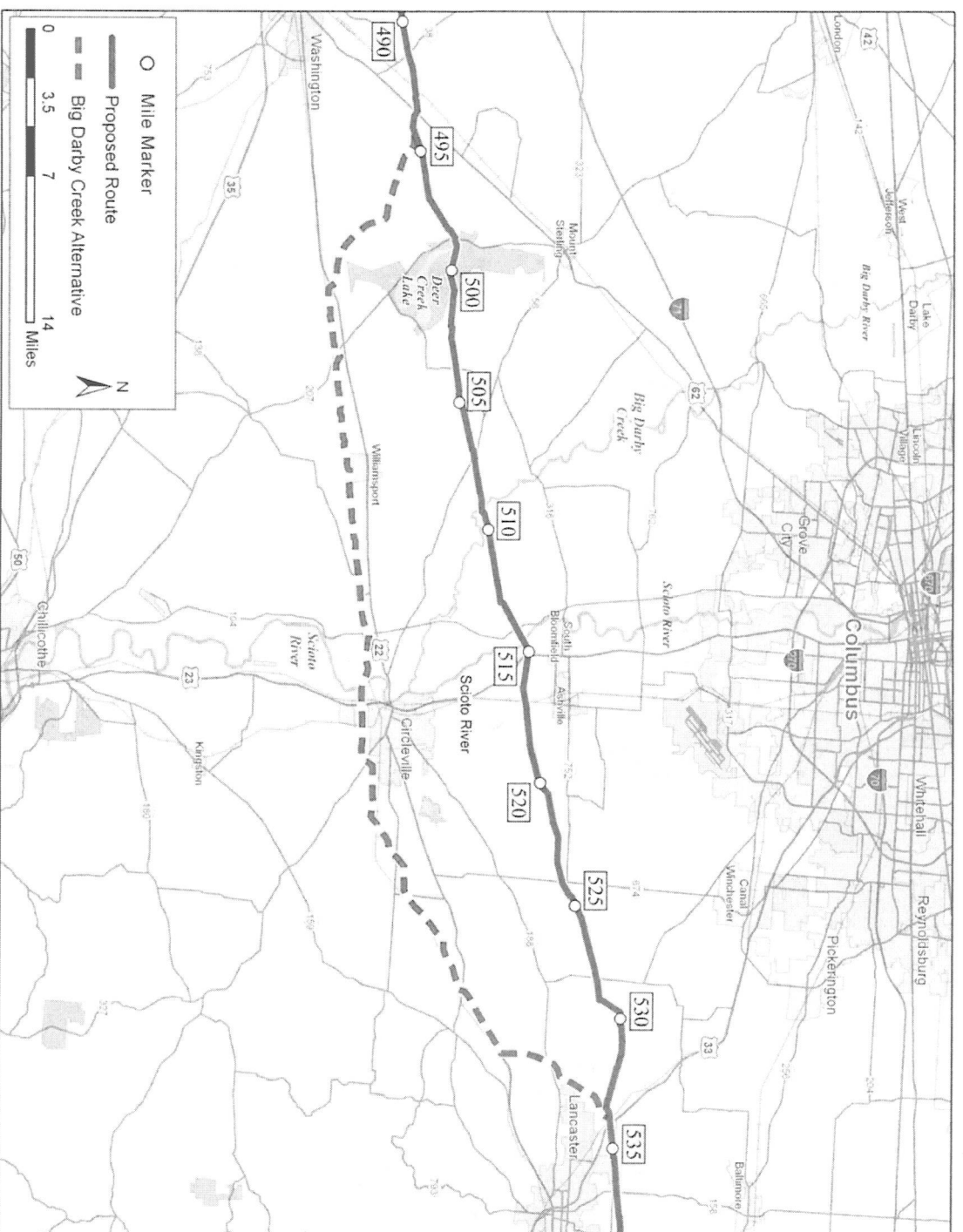


Figure 3.4.9-1
Big Darby Creek Route Alternative



Ohio Department of Natural Resources

TED STRICKLAND, GOVERNOR

SEAN D. LOGAN, DIRECTOR

June 12, 2008

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, DC 20426

RE: OEP/DG2E/Gas 2
Final Environmental Impact Statement
REX East Project
Rockies Express Pipeline, LLC
Docket No. CP07-208-000

Dear Secretary Bose:

Staffs from several divisions and programs within Ohio Department of Natural Resources have concluded a review of your Final Environmental Impact Statement (FEIS) regarding the REX East Project being proposed by Rockies Express Pipeline, LLC. Experts from our Divisions of Geological Survey, Real Estate and Land Management, Water, the Scenic Rivers Program as well as our Departmental Administration have all contributed and raised concerns regarding portions of the FEIS for the REX East Project.

Most notable of these concerns was the Federal Energy Regulatory Commission's (FERC's) rejection of the department's and the Ohio Power Siting Board's recommendation to utilize alternate routes for crossings of the Big Darby Creek State and National Scenic River and the Little Miami State and National Scenic River. Our suggested alternative for the Big Darby Creek crossing would have avoided crossing this high quality stream altogether thus eliminating the possibility of any negative impacts to this unique and extremely high quality resource.

Our proposed alternative crossing of the Little Miami River would have avoided portions of the Caesar Creek and Caesar Creek State Park which is one of our most heavily utilized state parks in the Southwest Ohio Region. This alternative would have also crossed the Little Miami River in an area that we felt was a more disturbed corridor, crossed fewer tributaries and ravines and ultimately resulted in the removal of less riparian corridor than the original REX alignment.

In response to FERC's decision to approve the original alignments for these crossings, we have initiated additional review of both stream crossings in an attempt to better discern the probability of negative impacts resulting as a problem with one of these stream crossings. While HDD and microtunneling greatly reduce the potential negative



Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
ODNR Response to FEIS, REX East
June 12, 2008
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impacts to stream ecosystems when compared with open trenching methods the possibility for problems (frac out, drill seizure/refusal, stream bed subsidence) still exist. Geologists within our Division of Geological Survey and ground water hydrologists within our Division of Water have determined from data provided as part of REX's submittal to FERC that the geologic setting for both scenic river crossings scheduled for horizontal direct drilling (HDD) consist of bedrock valleys partially or completely infilled with unconsolidated sediments (gravel, sand, silt, and clay), glacial till, and glacio-fluvial and lacustrine sediments. This is verified by borings at the crossing supplied by Rockies Express and from regional mapping by the Division of Geological Survey.

The tunnel crossing of the Little Miami River, according to a tunnel cross-section shared by Rockies East, will be almost entirely in bedrock and reach a depth of approximately 200 feet beneath the Little Miami River. Unconsolidated sediments will be encountered near the surface at both the tunnel entry and exit points. Commonly thick slabs of the limestone bedrock will shingle the rock surface beneath the overlying sediment and may be a concern for drilling. Although the bedrock is commonly fractured and jointed, the depth of the drill string beneath the river minimizes any potential reasonable impact such as drilling fluids coming to the surface in the Little Miami River.

However, we have greater concerns in regard to the proposed horizontal drilling at Big Darby Creek. As a reminder, the Big Darby Creek is designated as both a State and National Scenic River recognized for its outstandingly remarkable values for wildlife. The tunnel crossing at Big Darby Creek will be in unconsolidated gravel, sand, silt and clay and the tunnel boring will be a depth of 40 feet beneath the creek. Borings taken on the west side of the proposed crossing route indicate the existence of boulders and cobbles immediately above the bedrock surface. Boulders at the bedrock – unconsolidated material interface are common and can impede drilling. Borings on the east side of the crossing show the absence of boulders, but these small samples do not preclude the presence of boulders from the east side. Therefore, boulders should be anticipated where the tunnel is close to bedrock which is directly underneath the Big Darby Creek. The possibility of the drilling fluids traveling from the horizontal drill hole to the surface is greatest at the tunnel entry and exit points far away from the creek. However, the possibility of rapid and unpredictable change in lithology both vertically and horizontally over short distances across the buried valley affords the possibility of porous and permeable sand, gravel, and cobble-rich strata being present and acting as a conduit to the surface. Variability of the sediment layers at these crossings make the travel of drilling mud to the surface beneath the body of water difficult to predict, but any measure that would limit this possibility is a reasonable goal. Given these geological formations, the shallow depth and the risk of failure, we again request that REX avoid the Big Darby Creek altogether and proceed along the alternate route as proposed on page 3-25 of the REX East Project Draft Environmental Impact Statement dated November 2007 and page 3-30 of the REX East Project Final Environmental Impact Statement dated April 2008.

In the event REX is permitted to go forward with HDD at the Big Darby Creek location, our Division of Natural Areas and Preserves states that fluids and cuttings must be contained and properly disposed. If major obstacles would be encountered during the drilling of the pipeline beneath the Darby Creek or the Little Miami River, micro-tunneling should provide a reasonable alternative to the HDD. If a subsequent micro-tunneling attempt also fails then either pipeline crossing should be realigned to a more suitable location. In the case of the Big Darby Creek, this would be the alternative alignment that avoids this stream altogether.

To further minimize possible negative impacts to both streams as part of this project we would also like to request that Rockies Express implement the following practices at each of the scenic river crossing locations:

1. If dewatering is necessary to facilitate pipeline installation all wastewater shall be pumped onto a vegetated area a sufficient distance from the Big Darby Creek/Little Miami River to allow for complete infiltration. No wastewater of any kind shall be discharged directly into either stream or any of their tributaries. Any storm water drainage shall be directed onto a vegetated area to allow for complete infiltration. If discharge to a vegetated area is not feasible, then wastewater shall be discharged into a sediment filter bag or into a temporary detention/retention pond with sufficient retention time to permit for the settling of all suspended solids.
2. Idle equipment, petrochemicals and toxic/hazardous materials shall not be stored in the floodplain or near any drainage ways, ditches or streams that could convey such materials to the Big Darby Creek/Little Miami River. Petrochemicals and toxic/hazardous materials shall not be discharged into either stream, its floodplain or any tributary drainage ways, ditches or streams. Refueling of equipment shall not occur in the floodplain or near any drainage ways, ditches or streams. A spill containment and cleanup plan shall be generated prior to the start of the project.
3. A sediment and erosion control plan shall be developed for the site and implemented before earthwork commences. Particular attention shall be given to any drainage ways, ditches and streams that could convey sediment laden water directly to the Big Darby Creek/Little Miami River. Properly installed (framed and entrenched) sediment fence shall be utilized around the work site perimeter and storm water inlets. Appropriately designed rock-check dams and other erosion controls shall be utilized in ditches and drainage ways. All controls shall be properly maintained until final site stabilization is achieved. All sediment and erosion controls shall be removed upon stabilization of the project area with vegetation. Straw bales shall not be permitted as a form of erosion control. All denuded areas, including ditches, culverts and river/stream banks, shall be

permanently seeded and mulched (or fiber mat) immediately upon completion of earthwork or temporarily seeded and mulched (or fiber mat) within seven days if the area is to remain idle for more than thirty days. Access roads constructed on slopes shall be graveled to prevent erosion from surface runoff.

4. All excess excavated materials from the bore pit and tunnel, drilling mud or any other excess earthen material should be disposed of outside the 100 year floodplain of the Big Darby Creek/Little Miami River. Any such material being temporarily stored on-sight should be protected with appropriate sediment and erosion controls including temporary seeding if the material is to be stored more than 7 days. The bore pits shall be reclaimed and seeded and mulched within two days following the completion of the crossing. Completion of the crossing shall be defined as the placement of the pipe in the tunnel and the installation of caps at each end of the pipe crossing. Bore pits and ancillary disturbed areas should be located beyond the 100 year floodplain boundary to avoid the possibility of these facilities being inundated by flood waters. We recommend any work conducted within the 100 year floodplain of the Big Darby Creek/Little Miami River be conducted from August 1 through October 31 which is typically the driest period of the year in Ohio. This will also reduce the possibility of any part of the river crossing operation becoming inundated with flood waters.
5. No more than 500 feet of trench shall be open at any given time. Trench opening, installation of pipe and backfilling should occur so as to minimize the amount of area disturbed. All open trenches shall immediately be backfilled and seeded and mulched within seven days of completion of pipe installation.
6. Open trench stream crossings on Darby and Little Miami tributaries shall be constructed during dry periods or periods of extremely low flow. Stream crossings shall not be performed from March 15-June 30 unless the streambed is dry. Stabilization of the crossing area shall be conducted immediately upon completion of the stream crossing. Sod or erosion control matting shall be utilized to stabilize stream banks at crossing locations. Stream banks and bottoms shall be restored to previously existing contours and elevations. Restoration shall also include tree plantings with species from the approved scenic river tree list.
7. A mussel survey should be performed at the Little Miami River crossing site. The survey area should include all wetted substrate from 150m upstream of the proposed pipeline crossing to 450m downstream of the crossing site. Because a mussel survey was recently completed as part of the Texas Eastern Crossing of the Big Darby which is in the same general location as the REX East crossing, we do not feel that a survey of the Big Darby is necessary at this point in time. The mussel survey should be designed and conducted by a professional

malacologist. We recommend consulting with Dr. Michael Hoggarth with Otterbein College regarding survey work on the Little Miami River. Dr. Hoggarth recently completed a mussel survey of the Little Miami and will be able to provide valuable in-sight and guidance with regard to surveying mussel populations on this stream. He can be reached at (614) 823-1667.

8. Please notify, Mr. Bob Gable, Scenic Rivers Program Manager, with the project start date for each river crossing a minimum of 7 days prior to the commencement of work. Mr. Gable will then notify his regional staff for the Big Darby Creek and Little Miami River. Bob should also be contacted one week prior to completion of work on each river crossing. Scenic Rivers staff as well as staff from ODNR's Divisions of Geological Survey shall be permitted to conduct site inspections with the contractors present.
9. In addition to the preceding best management practices outlined above, some mitigation in the form of riparian corridor protection should be offered to offset potential negative impacts associated with the crossings of the Big Darby Creek, the Little Miami River and their tributaries caused during the installation of the REX East line.
10. We would also like to request that REX notify key constituent groups on each river according to the same parameters listed in #8 above. We would also appreciate allowing staff of these organizations to be able to visit the crossing sites with the contractors supervision. Please notify the following persons representing the following organizations:

Mr. Anthony Sasson
Director of Freshwater Ecology
The Nature Conservancy, Ohio Chapter
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Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
ODNR Response to FEIS, REX East
June 2008
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11. Rockies Express will reimburse salary and travel expenses incurred by the Division of Geological Survey for monitoring the two drill sites during the pilot-hole stage of the HDD process. These expenses will not exceed \$11,430 and will be reimbursed to the Division of Geological Survey within 3 months of completion of the monitoring task.

We appreciate the opportunity to provide these comments as well as REX's efforts to minimize impacts to the natural resources, particularly the State and Nationally Designated Scenic Rivers, of the State of Ohio. Their willingness to directional drill these two crossings is a significant step with regard to minimizing the negative impacts to both of these high quality river systems; however, as stated above, ODNR requests that FERC recognize the high quality characteristics of the Big Darby Creek and the heroic efforts of many interested parties to protect this exceptionally high quality resource. As such we invoke upon FERC to mandate that REX avoid the Big Darby and instead follow the alternate as proposed on page 3-25 of the REX East Project Draft Environmental Impact Statement dated November 2007 and page 3-30 of the REX East Project Final Environmental Impact Statement dated April 2008.

If you have any additional questions or concerns regarding the Big Darby Creek or Little Miami River please contact Bob Gable, Scenic Rivers Program Manager at 614-265-6814 or bob.gable@dnr.state.oh.us.

Sincerely,



Steve Maurer, Chief
Division of Natural Areas and Preserves
Ohio Department of Natural Resources

cc: Ms. Cathryn Loucas, Deputy Director, ODNR
Mr. Tony Celebrezze, Deputy Director, ODNR
Mr. Tony Logan, Chief Legal Council, ODNR
Mr. Bob Gable, Scenic Rivers Program Manager
Mr. Mac Swinford, Division of Geological Survey
Mr. Mike Angle, Division of Geological Survey
Mr. Anthony Sasson, The Nature Conservancy
Mr. Eric Partee, Little Miami Incorporated
Mr. John Tetzloff, Darby Creek Association

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Summary: App for Rehearing Request for Rehearing submitted on behalf of the Ohio Power Siting Board to the FERC in Docket Nos. CP07-208-000 and CP07-208-001 electronically filed by Kimberly L Keeton on behalf of Ohio Power Siting Board