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September 29, 2006

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First St., N.E., Room 1A
Washington, DC 20426

Re: U.S. EPA scoping comments concerning FERC's Notice of Intent to prepare an EIS for the Rockies Express Pipeline Project, Eastern Phase in Missouri, Illinois, Indiana, and Ohio. (Docket No. PF06-30-000)

Dear Ms. Salas;

The United States Environmental Protection Agency, Region 5 and Region 7 (U.S. EPA) reviewed the Federal Energy Regulatory Commission's (FERC) above referenced Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS), dated August 16, 2006. The NOI identifies a proposal by Rockies Express Pipeline LLC (Pipeline Company) to build and operate the Rockies Express Pipeline, Eastern Phase [Rockies Express (East)] as a new 622 mile-long, 42" diameter natural gas pipeline and associated facilities in Missouri, Illinois, Indiana and Ohio. U.S. EPA appreciates the opportunity to learn more about this project and provide scoping comments during FERC's September 12, 2006, Interagency Scoping Meeting for the Indiana portion of Rockies Express (East). While most of this project would be located in U.S. EPA, Region 5, the portion within Missouri is located within U.S. EPA, Region 7.

This letter with enclosure serves to: (1) respond to FERC's NOI request for U.S. EPA to become a cooperating agency for the preparation of FERC's National Environmental Policy Act (NEPA) EIS for the Rockies Express (East) proposal (project), (2) reiterate that Region 5 is the lead U.S. EPA NEPA review contact office for this project, (3) respond to FERC's NOI request to identify the number and type of DEIS copies to send to Region 5 and Region 7, (4) inform FERC that U.S. EPA concurs, in part, with the initial list of environmental issues identified in the NOI that will be addressed in the upcoming DEIS, and (5) identify additional issues and provide additional comments for your consideration as FERC prepares the EIS for this proposal. Please see the enclosure to this letter for our detailed comments.

Cooperating Agency

After serious consideration of your agency's request, we respectfully decline this opportunity to become a formal cooperating agency for the Rockies Express (East) proposal. Our decision is based on the limited amount of resources available, and our responsibilities under NEPA and Section 309 of the Clean Air Act (CAA). We are

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Technician DB Date 12-7-06

already participating in the FERC's NEPA Pre-Filling Process for this project by attending and providing input during the Interagency Scoping meeting held in Indiana, and responding to phone and email inquiries from FERC and Rockies Express Pipeline LLC. We are willing to support your efforts by participating in additional meetings, and by providing technical reviews of draft summary documents to the maximum extent staff time and travel funds allow. At this time, we request you keep both U.S. EPA, Region 5 and Region 7, apprised of any upcoming interagency meetings and would appreciate a 30-day advance notice. We also request hard copies of any pre-DEIS project documentation that is submitted for our review and comment.

While U.S. EPA may not have time to review and comment on all pre-DEIS information, we will review and rate the forthcoming Draft Environmental Impact Statement (DEIS) under our authority at Section 309 of the CAA and NEPA to ascertain the adequacy of the proposal's documentation for compliance with NEPA. Our review will cover the adequacy of the information contained in the NEPA document in the following areas: (1) Purpose and Need, (2) Feasible Alternatives and Alternatives Analysis, (3) Affected Environment, and (4) Environmental Impacts (including direct, indirect and cumulative impacts) and Mitigation (i.e., avoid, minimize and then compensate). Please send two hard copies and two CD copies of the future DEIS, when available, to each Regional Office, for our review and comment by the start of FERC's DEIS public comment period. The Region 7 contact is Ms. Kim Johnson. Ms. Johnson may be reached by calling 913/551-7975. The Region 5 contact is Ms. Virginia Laszewski (contact information below).

We look forward to reviewing FERC's DEIS for Rockies Express (East) Project. If you would like to discuss the content of this letter and enclosure in more detail, please contact Virginia Laszewski of my staff at 312/886-7501 or email her at laszewski,virginia@epa.gov.

Sincerely,

/S/

Kenneth A. Westlake, Chief
NEPA Implementation Section
Office of Science Ecosystems and Communities

Enclosure: 1

U.S. EPA Scoping Comments Concerning FERC's August 16, 2006, Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Rockies Express Pipeline Project, Eastern Phase

U.S. EPA provided scoping comments during FERC's Indiana Interagency Scoping Meeting held on September 12, 2006, at Indiana Department of Environmental Management (IDEM) Offices, in Indianapolis, Indiana. The following comments highlight some of the overall project scoping comments U.S. EPA made during the September 12th meeting, and provide additional comments for FERC and Rockies Express Pipeline LLC (Pipeline Company) consideration as FERC prepares the National Environmental Policy Act (NEPA) Draft EIS (DEIS) for the Rockies Express Pipeline Project, Eastern Phase [Rockies Express (East)].

Rockies Express Project and the Keystone Pipeline Project

We recommend NEPA documentation address the location and timing of construction of the Keystone Pipeline project in relation to the Rockies Express Project which follows a similar route. Coordination for pipeline construction could reduce impacts and/or combine mitigation funds to produce better mitigation results. This might help avoid a situation where one of the pipeline projects is built and mitigated, only to have the area torn up again for the construction of the second pipeline project.

Alternatives and Use of Existing Rights-of-Way for Pipeline Location

In order to avoid, in part, degrading undisturbed landscapes/wildlife habitat we recommend Rockies Express Pipeline LLC and FERC develop and analyze pipeline route alternatives in the DEIS that utilize existing rights-of-way, whenever feasible.

Differences in State Laws and Regulations (Missouri, Illinois, Indiana, Ohio)

Because the proposed pipeline would be located in four states, each with their own unique regulations, there will be areas of concern that will need to be addressed separately for each State in the NEPA document. For example, we note that the State of Indiana has a new eminent domain law that would be of particular interest to Indiana property owners potentially affected by the pipeline. A reasonably detailed explanation of eminent domain and how it would work in each state, if necessary, for the Rockies Express (East) pipeline project will need to be included in the NEPA documentation.

Pipeline Safety

We concur with the NOI and comments made during FERC's public scoping meetings that pipeline safety, regulations, monitoring and inspections will need to be addressed in the NEPA document.

Cumulative Impacts Analyses - The DEIS should provide cumulative impacts analysis for each resource of concern (e.g., wetlands, forest/core forest and wildlife habitat, streams/rivers, surface and groundwater (quality/quantity and hydrology) impacted by the project. The purpose of a cumulative impacts analysis is to assess the incremental impact

on a resource due to connected and unconnected actions that take place in a geographic area over time (i.e., past, present and future). The impacts from the proposed Keystone Pipeline project may be applicable here. The cumulative impacts analyses would aid in identifying the significance of the impacts on the resources of concern and help inform the appropriate types and level of mitigation required to offset the proposal's impacts.

The appropriate area of consideration and the time frame to use when assessing cumulative impacts will most likely vary for each resource under consideration. For example, forested wetland loss is probably best considered in the context of historical forested wetland loss in a particular watershed. It takes decades to replicate the lost functions and values of a forested wetland. Incremental forested wetland loss due to past, present, and future actions when viewed in a cumulative context may result in a significant impact. Consequently, impacts to a forested wetland resource, no matter how small for a particular proposal, may be significant. This would dictate that all efforts be made to avoid and minimize impacts to forested wetlands, and require adequate mitigation for any unavoidable loss.

Wetlands/Streams/Rivers - The NEPA document should identify all streams or waterbodies that would be crossed. Impacts to water bodies should be thoroughly identified and discussed. This may include, but not be limited to, a characterization of their existing conditions, identification and assessment of the direct, indirect and cumulative impacts to a water body's water quality and aquatic resources. Details regarding the widths of proposed stream and river crossings and how these crossing will be accomplished - directional drilling or otherwise - should be identified and discussed in the NEPA document. We recommend the use of directional drilling for all perennial water body crossings, when feasible.

The NEPA documentation should identify all wetlands (by location, size, and type) and waters of the U.S. that may be impacted either directly or indirectly by the proposed project and connected actions. These would include any existing wetland mitigation sites and wetland mitigation banks. These areas should be depicted on maps in relation to all practicable alternative pipeline routes, compressor stations, staging areas, access roads and pipe yards. Their functions and values should be evaluated and identified. The NEPA document should identify which U.S. Army Corps of Engineers (ACOE) District Office/s is/are involved in the Clean Water Act Section 404 permitting requirements for placing fill material into wetlands and waters of the United States.

We strongly advise that the proposed route of the pipeline, associated laterals and their ancillary facilities avoid impacts to forested wetlands and fens. Replication of these types of wetlands is difficult and usually not very successful. We expect the NEPA documentation to substantiate that the overall proposal will avoid direct and indirect impacts to these types of wetlands.

Water Quality/Quantity - Impacts of the various alternatives on water quality should address, but not be limited to, a water body's designated use and compliance with applicable Water Quality Standards and Clean Water Act (CWA) Section 401 Water

Quality Certification. Any storm water detention basins deemed necessary, due to project implementation activities, should neither be located in wetlands nor discharge directly into wetlands or waters of the U.S. without appropriate pretreatment. If proponents propose hydrostatic testing, then water source and discharge areas should be identified and impacts evaluated. Details of the testing methods should be included. The NEPA documentation should discuss whether CWA National Pollution Discharge Elimination System (NPDES) Section 402 discharge permits and CWA 402 NPDES stormwater construction permits are required, from the states, as well as, from U.S. EPA for the portion of the proposal through Oneida tribal lands. Impacts to all public and private water supply wells should be evaluated. The DEIS should identify proposed mitigation measures that will be taken to prevent erosion, and any contaminants from reaching any waterbodies.

Wetland Mitigation - Mitigation requirements under 40 CFR Section 230 address the replacement of the wetland functions and values that are unavoidably lost. If the NEPA documentation identifies that wetlands will be impacted, after avoiding and minimizing impacts to the fullest extent practicable, then a proposed mitigation plan should be developed and incorporated into the NEPA document. Wetland mitigation should first take place within the immediate watershed where the impacts occur. Wetland mitigation design should be based on the replacement of wetland functions and values that would be lost. If certain mitigation details can not be provided at the time the document is written, then it should contain statements of commitment to develop and do those portions of the mitigation plan that are not included. Any final mitigation plan should include, but not be limited to:

- a commitment to acquire and start work at the mitigation site/s prior to project construction;
- a detailed schedule of events in relation to pipeline work and wetland creation/restoration work;
- detailed construction plans;
- a detailed mitigation monitoring plan, including a time table;
- detailed performance criteria to measure success;
- detailed specifications and commitments for corrective measures to be taken if performance criteria are not met; and,
- a commitment to the establishment of a protection and management plan in perpetuity (i.e., legal surveys of the specific boundaries with buffers and conservation easements that are given to a land conservancy organization) for all mitigation areas.

We recommend a 100-foot vegetated buffer be provided around each wetland mitigation site. The buffer will enhance wildlife habitat and protect the site from sediment buildup that could result from land use practices immediately outside the buffer area. Wetland restoration is preferred to wetland creation or enhancement because it has a higher rate of success. Mitigation site should take place in consultation with the federal and state resource agencies.

If mitigation cannot be performed within the same watersheds where wetland impacts occur, and mitigation banking is proposed as an option, then details on the mitigation bank(s) should be included in the NEPA document. This information should include, but not be limited to, the location of the mitigation bank/s and the respective service area(s), description of the bank's landscape setting (geomorphology), water source/s, vegetative structure and composition, identification of the bank owner, total acreage to be purchased, types and acreage of wetlands to be purchased, cost, and an explanation of how the functions and values of the wetlands lost are replaced by the proposed mitigation.

Vegetation and Wildlife - Coordination and/or consultation with the U.S. Fish and Wildlife Service regarding any federal threatened or endangered species must take place and be documented in the EIS. In addition, potential impacts to State-listed species that may occur in the project area should be identified and discussed. Proposed mitigation for adverse impacts should be presented in the DEIS.

We are also concerned about the loss of upland resources and habitat fragmentation associated with pipeline construction and associated facilities construction. An inventory of any high quality or locally and regionally rare habitats or plant communities, such as remnant prairie, and wildlife corridors should be included in the documentation. This would also include identification of forested areas and core forest and an assessment of the potential to impact forest interior dwelling birds, including neo-tropical migrants. Loss of core forest is the main reason for the decline in neo-tropical migrant populations. A description and the aerial extent of each site should be presented in the inventory. These resources should be avoided to the extent possible. The DEIS should identify the mitigation compensation measures that will be undertaken for any unavoidable loss.

Ashburn Wildlife Area: We recommend the pipeline route avoid the Ashburn Wildlife Area which is located in the northeast section of Pike County, Missouri, on the east side of the Mississippi River close to where the Mississippi River crossing may be located.

Big Walnut Nature Preserve: We recommend the pipeline route avoid the Big Walnut Nature Preserve in central Indiana.

We recommend replacement trees be planted to offset any unavoidable tree loss. We generally recommend that native saplings be used, if practicable, at a minimum 1:1 replacement ratio near the project site. If this is not feasible, tree loss mitigation might also include assisting county, state, or federal agencies with any on-going or planned forest reclamation projects in the watersheds affected. We recommend that the proponents commit to voluntary forest/tree mitigation, if applicable, in the DEIS and provide, as detailed as possible, a conceptual forest/tree mitigation plan that compensates for the loss and fragmentation of forest habitat due to the proposal.

We recommend that vegetation that must be removed and that can not be reused elsewhere be mulched and given to citizens or reused during revegetation at the construction sites. Only native species should be used to revegetate.

Equipment and materials should not be placed or stored in wetlands or environmentally sensitive upland areas. Where possible, excavation should be done from non-sensitive upland areas. If equipment must work in wetlands, then it should be placed on mats. Site preparation and construction activities should be timed to avoid disturbing plants and animals during crucial seasons in their life cycle, such as migration, mating and rearing of their young. If stream bank disturbances result, then we suggest stabilizing stream banks using soil bioengineering techniques. Best Management Practices (BMPs) that will be utilized for this particular project should be identified.

Air Quality - NEPA documentation should identify and discuss the potential impacts to air quality from construction and operation of the proposed project. We recommend Rockies Express Pipeline LLC pursue opportunities to use clean diesel equipment, vehicles and fuels in construction of the project, and that FERC identify and disclose any opportunities to utilize this type of equipment in the NEPA document.

Noise - Construction and/or operational activities from the pipeline, compressor stations, etc., may cause an increase in local noise levels. The NEPA documentation should identify and discuss the sources of noise pollution. The document should identify and provide details of the mitigation measures that will be implemented. Mitigation measures may include, but are not limited to, the use of noise barriers, placement of trees and shrubs, sound-proofing structures, and the use of compressors that emit the lowest levels of noise possible.

Environmental Justice (EJ) - The NEPA document should identify and evaluate the impacts of this proposal on low income and/or minority communities (i.e., EJ communities) as compared to the general population. This might include, but is not limited to, an assessment of potential noise impacts to EJ communities due to proposed compressor station locations.

Section 106 - Future NEPA documentation should confirm that appropriate National Historic Preservation Act Section 106 consultation with the Missouri, Illinois, Indiana and Ohio State Historic Preservation Offices (SHPOs) has taken place. This might be in the form of letters from the SHPOs.