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May 30, 2007

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

RE: Docket No. CP07-208-000
Rockies Express-East Permit Application

Dear Commission Members,

Indiana Farm Bureau represents approximately 280,000 members and 80,000 farm families across the state of Indiana, and specifically over 25,000 members in the nine counties to be affected by the proposed Rockies Express-East (REX) interstate pipeline. Indiana Farm Bureau is dedicated to preserving our members' property rights and furthering the long-term viability of Indiana agriculture.

Our involvement in this issue came at the request of some of our members who are in the path of the pipeline. Early on, we took the position to not oppose the construction of the pipeline. However, we were determined to ensure that our members' interests were protected during and after the pipeline's construction. In order to protect our members' interests, we requested that REX develop an agricultural impact mitigation plan which considered the specific geography and conditions present on Indiana's farmland. This request, along with those of government agencies in Illinois and Ohio led to the development of the Agricultural Impact Mitigation Plan (AIMP). We have reviewed the AIMP which was submitted as part of the application and support its use. While we are pleased that REX listened to our concerns and those of our members and agreed to draft the AIMP, there are a few items that we feel must be addressed to properly protect our membership. These include specific terms in the AIMP and how it will be used to guide easement negotiations, construction, and remediation.

Indiana Farm Bureau is concerned about whether the pipeline will be buried deep enough so that it does not impact drainage, including drainage tile, or prohibit the effective placement of drainage tile in the future. In addition, we are disappointed that the AIMP does not address several concerns associated with damage to or destruction of lands enrolled in government conservation programs. Further, we are concerned about the enforcement of the AIMP.

While it is unfortunate, we also feel that we must address correspondence received by the FERC which questioned the motives of REX in drafting the AIMP and asserted impropriety upon the part of Indiana Farm Bureau in reviewing the draft and suggesting better terms. We filled this role only after our request for agencies of State government to negotiate terms were denied because no agency felt that it had the authority of law to negotiate an agreement with REX which could then be enforced. In the absence of governmental oversight, we felt that our involvement in the AIMP drafting was necessary. However, at no time was the process secretive as it has been implied. While Indiana Farm Bureau did not organize a formal group of affected landowners to

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comment upon the drafts, we did not exclude input from any source and actively sought input from affected landowners, landowners with pipelines currently on their property, drainage contractors, and government agencies. We were fortunate to receive considerable technical support from employees of the Natural Resource Conservation Service, and appreciate their attention to this matter. In addition, input was also provided from engineers, and guidance was provided by employees of government agencies in other states who are familiar with and involved in mitigation plans for pipelines.

Furthermore, we held three meetings across the state to provide information about the project and took input from the nearly 500 attendees. Representatives of REX took part in portions of those meetings at our invitation and also relied upon comments and questions in revising the final draft of the AIMP.

Finally, at no time did we believe or state that the AIMP would be binding upon landowners such that they could not negotiate better terms in an easement. Rather, we recognized that the FERC would approve minimum standards for many of the issues addressed in the AIMP and that those standards would apply in any eminent domain proceedings. Our goal was to establish a satisfactory baseline that could be improved by negotiations between the landowners and representatives of REX. With the approval and oversight of the FERC we believe this was accomplished.

We would also like to point out that since our involvement began with this project that legislation, HEA 529 (2007), was passed in Indiana that directs the Indiana Utility Regulatory Commission (IURC) to develop guidelines for pipeline construction. These guidelines are to include terms similar to those contained in the AIMP. We support the involvement of the IURC and urge them to use the AIMP as a foundation for development of their guidelines.

PIPELINE DEPTH AND DRAINAGE IMPACTS

REX has proposed to bury the pipeline at a depth of three feet below the topsoil layer of the soil. In most cases in Indiana, this should provide for a depth of forty-two to fifty-two inches. From a safety standpoint, this is likely sufficient for normal farming practices. However, the depth of the pipeline and its effect upon drainage cannot be discounted.

Our members have presented serious concerns about the effect that the pipeline may have on current drainage tiles and upon drainage in general. Landowners continue to have problems with drainage and drainage tiles in areas where pipelines have been placed. Causes include damaging tiles in the work area that were not fixed, settling or crushing of the drainage tile in the pipeline trench, or the inability to place tiles in areas where they are needed because the pipelines are at tile depth. From our discussions with landowners, we know that drainage tiles in the affected areas generally run from three to five feet deep. This is the precise area in the soil profile where REX proposes to place the pipeline. Representatives of REX stated at the meetings held by Indiana Farm Bureau that they would consider written drainage plans that landowners have when installing the pipeline so as to not interfere with the plans of the landowner. We request that FERC

include such a consideration in the certificate issued to REX. Additionally, to the extent feasible, we request that in areas where tile may be needed in the future that the pipeline be placed at such a depth so as to not interfere with the future placement of tile.

Additionally, we recognize that REX has stated that drainage tiles will be inspected in the entire right-of-way to check for damage, and that REX will be responsible for correcting all repairs that fail due to pipeline construction, provided that REX made the repairs. We appreciate their attention to this matter because it is likely that tile within the right-of-way will be damaged. However, experience has shown that tile repairs can and do fail, and more importantly, that damage in tiles lines may not become evident until considerable periods of time after the tile is damaged. We therefore urge FERC to require REX to be responsible upon later discovery for repairing damage to tile lines caused by pipeline construction.

It is also possible that construction of the pipeline may alter drainage of farmland regardless of any impact upon or presence of drainage tile. In the event that problems with drainage, either on or outside of the easement, occur as a result of pipeline construction, we request that REX have the responsibility to correct it.

Finally, we request that these extra considerations be included for all farmland that could be used for cropland, especially any land that is classified as consisting of prime soils. Given the increasing demand placed upon crop production due to increases in biofuels and the reduction of acres due to urban development, it is necessary that the productive capabilities of our farmland not be diminished by activities that can be modified to have minimal impacts upon farmland.

COMPENSATION FOR AND MITIGATION OF DESTROYED GOVERNMENTAL CONSERVATION PROGRAMS

Federal and State government agencies encourage transforming marginal agricultural lands into alternative ecosystems through various conservation programs. Programs such as the Wetland Reserve Program (WRP), Conservation Reserve Program (CRP), Conservation Reserve Enhancement Program (CREP), and the Wildlife Habitat Incentives Program (WHIP) offer financial incentives to farmers who plant trees, shrubs, and other ground covers on land to address soil, water, natural resource and wildlife concerns for a set period of time. Unfortunately, the REX pipeline is likely to disturb various program lands as it transects Indiana.

Indiana Farm Bureau supports resource conservation and environmental enhancement and is therefore concerned with the destruction of these types of programs. The destruction of program lands raises two important areas of concern. First, how will REX be required to mitigate damages to these conservation program lands? Second, if lands cannot be restored or the construction results in a violation of the contract between the government and a landowner, how will farmers be compensated for their early withdrawal from these programs or for any penalties that they receive?

We understand that REX has made contacts with several government agencies to acquire data on the location of program lands. From the application, it appears though that most data cannot be shared because of privacy concerns. We encourage REX to provide the location of the pipeline to

the appropriate government agencies so that they can determine whether the path of the pipeline will intersect with any lands enrolled in government programs.

We also request that REX be responsible for mitigating damages to conservation program lands. Costs of establishing conservation program lands are commonly shared by the landowner and the governmental agency responsible for implementing the program. If the conservation practices are later destroyed, the burden is commonly placed upon the landowner to replace the conservation practice even if the landowner was not responsible for the condition that brought it out of compliance. If the activities of REX cause the landowner to fall out of compliance with the program, REX should be responsible for reestablishing program lands. If the conservation program may be reestablished in the same place, Indiana Farm Bureau believes that REX should be responsible for returning the lands to their prior state and according to the requirements established by the government agencies responsible for ensuring compliance with program requirements. If the practices cannot be restored, REX should bear any costs placed upon the landowner and/or be responsible for establishing new conservation practices to surrounding land at the request of the landowner and the appropriate government agency. Indiana Farm Bureau also feels that REX should be required to work with governmental agencies to determine what future financial losses may be incurred by landowners if pipeline construction forces early withdrawal from conservation programs.

Other governmental programs, such as Indiana Department of Natural Resources' (IDNR) Classified Forest Program (CFP), offer financial incentives to landowners who promise to maintain forested lands for a set period of time. Unfortunately, pipeline construction will require harvest and land-use transformation on some of these classified lands. Landowners will be forced to withdraw the disturbed portion of their forests from the CFP, as they will be unable to replant deep-rooted trees atop the pipeline easement. To the extent requested by landowners, REX should be responsible for new tree plantings to replace those which were lost. Additionally, Indiana Farm Bureau believes that timber owners should be compensated for losses in present and future expected timber revenues from destroyed timber lands through the receipt of annual payments continuing for the term of the pipeline easement.

CLARIFY THE PURPOSE OF THE AIMP

Indiana Farm Bureau wants to ensure that REX submits a copy of the AIMP to all agricultural landowners prior to the negotiation for an easement. Additionally, we would like for REX to clearly inform the landowners that the AIMP includes only minimum or default standards that will be met during pipeline construction. The language of the AIMP should clearly inform landowners that they are free to negotiate for different standards if they so choose. In that regard, we request that while FERC make the AIMP or a similar document a condition of the certificate, we request that FERC clearly delineate it as a baseline and not a set of standards that cannot be modified in good faith negotiations between the landowner and REX.

Indiana Farm Bureau supports individual property rights and believes that agricultural landowners should retain complete discretion and freedom when negotiating an easement with REX. We also, however, want to ensure that property owners enter into easement negotiations

fully informed of all possible environmental issues that may arise from pipeline construction. We believe that the AIMP, or a similar set of standards which may be agreed to by REX and the IURC and approved by FERC, is the most appropriate means for informing landowners of such concerns and leveling the negotiating field.

ENFORCEMENT OF THE AIMP

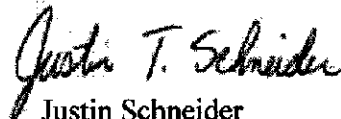
Indiana Farm Bureau is concerned about the enforcement of the AIMP in Indiana. Unlike our neighboring states, no state regulatory agency from Indiana has been involved in negotiation of the AIMP with REX. While the IURC has been authorized through legislation to establish guidelines, it is clear that they are only that—guidelines. Therefore, we are concerned about who will ensure that the terms of this AIMP or a similar set of guidelines developed by the IURC are met by REX in Indiana.

In all fairness to REX, its representatives have agreed to be bound by the terms of the AIMP. We appreciate the good faith effort made in drafting and revising the AIMP. Thus, there would seem to be little concern that the AIMP's terms or those negotiated in an easement will be followed. Nonetheless, in the event that they are not or a dispute arises about whether they have been followed, will FERC be responsible for enforcing the AIMP?

CONCLUSION

Indiana Farm Bureau appreciates the opportunity to comment upon the REX project. We urge FERC to consider our comments and include our concerns in the likely approval of this project. The staff of Indiana Farm Bureau is available to discuss or clarify any matter which we have presented in these comments.

Respectfully submitted,



Justin Schneider
Staff Attorney
Indiana Farm Bureau, Inc.