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**STATE OF INDIANA**  
**HOUSE OF REPRESENTATIVES**  
 THIRD FLOOR STATE HOUSE  
 INDIANAPOLIS, INDIANA 46204

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Cleo Duncan  
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Roads and Transportation: RMM  
 Financial Institutions  
 Statutory Committee on Interstate  
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FEDERAL ENERGY  
 REGULATORY COMMISSION

ORIGINAL

March 13, 2008

Kimberly D. Bose, Secretary  
 Federal Energy Regulatory Commission  
 888 First St., N.E.  
 Washington, D.C. 20426

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Dear Ms. Bose,

The purpose of this letter is to reflect the sentiments of Indiana Representative Robert Bischoff presented to you on February 28, 2008. I am the ranking member of the Roads and Transportation Committee and I also serve on the Statutory Committee on Interstate and International Cooperation. Like Representative Bischoff, I too am well-versed in matters concerning the Rockies Express Pipeline.

Though I share many of the concerns outlined in Representative Bischoff's letter, I am particularly concerned about the protection of the aquifer in the Hoosier Hills Water District. Recently, there was a serious filing error causing the HDD drill to drill only four (4) feet below that Whitewater River when it was intended to be drilled forty (40) feet under the river, as stated in the Indiana Department of Natural Resources permit. REX did not report this depth change to FERC. However, the depth change places the pipeline squarely in the Hoosier Hills aquifer. Hoosier Hills has expressed its opposition to the proposed location of the pipeline because of unreasonable risk and contamination of its public water supply, validated by this latest development.

REX has only stated that it will avoid storing hazardous materials and refueling equipment within 400 ft. of the Hoosier Hills WPA. However, this is not far enough away to protect the aquifer. From a hydrogeology perspective, the hazardous materials and refueling equipment must be stored outside the five (5) year Time of Travel. At 400 ft., the materials are clearly within one (1) year Time of Travel. Additionally, the aquifer can become polluted from the construction project alone. Cryptosporidium, Giardia, nitrates, pesticides, herbicides, and even e-Coli could contaminate the aquifer due the construction method used by Rockie's on the surface of the agricultural area in proximity to the aquifer. This, along with several other factors, will cause an unacceptable disruption in

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and around the aquifer, depriving Hoosier Hills ratepayers of their only potable water source.

I encourage FERC, the Indiana Department of Natural Resources, the Indiana Utility Regulatory Commission, and the Indiana Department of Environmental Management to review the proposed location of the Rockie's Express Pipeline in order to protect the aquifer and the citizens of Indiana who depend on it. Alternative routes have been established and are available to REX. Please consider altering the route of the pipeline to a more reasonable location.

Thank you in advance for your time and thoughtful consideration of this very important issue. I trust that every effort will be made to rectify this dispute. If you have any questions regarding this letter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Cleo Duncan".

Cleo Duncan  
State Representative  
House District 67

Cc: Mitchell E. Daniels, Governor of Indiana  
State Representative Robert J. Bischoff  
State Senator Robert Jackman  
State Senator Johnny Nugent  
Thomas Easterly, Commissioner, IDEM  
Robert E. Carter, Jr., Director, DNR  
David Hardy, Chairman, IURC

Encl: Letter from Representative Bischoff, Official Comment of Elrod Water Company, Inc.



**STATE OF INDIANA  
HOUSE OF REPRESENTATIVES  
THIRD FLOOR STATE HOUSE  
INDIANAPOLIS, INDIANA 46204**

**ROBERT J. BISCHOFF**  
Speaker pro tempore emeritus  
1137 Carroll Avenue  
Greendale, IN 47025

**COMMITTEES**  
NATURAL RESOURCES CHAIR  
AGRICULTURE AND RURAL DEVELOPMENT  
VETERANS AFFAIRS AND PUBLIC SAFETY  
ROADS AND TRANSPORTATION

February 28, 2008

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First St., N.E.  
Washington, DC 20426

Reference: Rockies Express Pipeline's Encroachment to  
Hoosier Hills Regional Water District's Aquifer

Dear Ms. Bose:

The purpose of this letter is to express my grave concerns with the proposed route of the Rockies Express Pipeline through Franklin County, Indiana. I am the Chairman of the Indiana House of Representatives Natural Resources committee, and also serve on the Agriculture & Rural Development committee, the Roads & Transportation committee, and the Veterans Affairs & Public Safety committee. I am well-versed in many of the issues implicated here by the Rockies Express proposed pipeline.

I am particularly troubled by the fact that Rockies Express' and FERC's approach to considering REX's application is in derogation of Indiana's Ground Water Protection Act and the guiding principles underlying Indiana's Wellhead Protection Program. The environmental risks are grave, and, if allowed to be left in place, pose a resultant risk of economic harm to all of southeast Indiana.

I have been informed that FERC's Draft Environmental Impact Statement notes that in Franklin County, the Wellhead Protection Areas of Hoosier Hills Regional Water District and North Dearborn Water Corporation are crossed by the proposed construction work area. Draft Environmental Impact Statement, Table 4.3.1-2, page 4-25. According to that table, the proposed pipeline is slated to cross over 1000 feet of the Hoosier Hills Regional Water District's wellhead protection area, and over 2000 feet of North Dearborn Water Corporation's wellhead protection area. Hoosier Hills Regional Water District, Franklin County Water Association, Inc. and North Dearborn Water Corporation, along with the Tri-Township Water Corporation, are the sole providers of potable water to over 37,000 citizens. As such, state and federal law requires vigilant protection of their water supply; Indiana's Wellhead Protection Program is in place to do precisely that. It cannot be disregarded.

Indiana's Wellhead Protection Program is a program to sustain drinking water quality in ground waters that supply public water supply wells and well fields. The program is mandated by the 1986 amendments to the federal Safe Drinking Water Act (SDWA), Title II, Section

205, Subsection 1428. The program requires compliance with the SDWA. It also ensures compliance with Indiana's Ground Water Protection Act (IGWA), I.C. 13-18-17 and requires a high priority for protection of the state's public water supplies. It considers not only the location of the well, but the surface area above the subsurface zone contributing water to the well under pumping conditions.

The SDWA requires states to protect ground water that supplies public water systems. The Act requires states to identify all potential anthropogenic sources (i.e., caused by people) within the protection area. The Wellhead Protection Program recognizes that the United States Environmental Protection Agency listed as potential contaminant sources *gas pipelines, petroleum products distribution centers and commercial storage pipes, whether above-ground, below-ground or underground*. Indiana's Wellhead Protection Program requires us all to protect ground water public water supplies from this proposed gas pipeline. How that protection is achieved is important. It cannot be addressed solely in an after-the-fact approach.

The program notes that "the SDWA's requirements are difficult to adhere to with monitoring and treatment alone." Thus, the program advances *prevention* as a means to help public water supply systems achieve drinking water standards on a consistent basis. Prevention is the prudent course of action here.

Because of the serious environmental risks posed by the current route, many citizens have expressed their concerns and opposition to me as to the placement of the proposed pipeline within the wellhead protection area of the public water supply that serves more than 37,000 citizens. The Franklin County Drainage Board, the Franklin County Commissioners, the four board presidents of four water companies that are central and critical to the quality of life of everyone in Franklin County, Indiana, the Hoosier Hills Regional Water District, and many individual citizens who have filed comments with FERC are unanimous: the route of the proposed pipeline must be changed.

I have been told that the topography of the area of the White Water River Basin is made up of rolling hills, and the gradient of the flow of the water is toward our water source, traveling toward it to the south and east, from the north and west. The location of the pipeline is proposed to be to the north and west of Hoosier Hills' water supply.

Any contamination from REX's construction activities or operations will move directly toward the Whitewater Aquifer and the Hoosier Hills wellhead. Further, because the soil in the area is sandy, it is highly permeable. Combining the permeable nature of the soil with how groundwater travels underground as it is pulled by the water pumps creates a condition ripe for contamination. The water companies' pumps draw the groundwater, and create a "cone of depression" underground. The force of the draw pulls contaminants through the highly permeable soil and draws contaminate straight to the aquifer.

These conditions heighten the risk of contamination, thereby heightening the need to prevent any potentially pollutive activities within the five-year time of travel area of our wellhead protection area. The *only* way to prevent pollutive activities is to prevent potential contaminant sources from invading the wellhead protection area. This means that the pipeline must be prevented from being installed in its proposed route.

I have been told and am concerned that REX does not appear to have provided adequate information to FERC. At 4-26 of DEIS FERC recommended that "Prior to the end of the draft EIS comment period, Rockies Express filed with the Secretary the distance of each WPA area from the proposed construction work area and documentation of consultations with applicable municipalities and/or other federal and state agencies regarding construction in areas with WPA or other groundwater management areas crossed by the pipeline." On January 14, 2008 Rockies filed Table 49-1 in supposed response to FERC's recommendation. That table confirms that Rockies' pipeline will cross the HHRWD's WPA; however, it completely lacks documentation of any consultations with any municipalities and/or other federal and state agencies, noting only one email it sent.


*Replying solely on mitigation plans serves neither the spirit nor the letter of the Indiana Wellhead Protection Program.* Despite the fact that the proposed pipeline encroaches directly into Hoosier Hills' wellhead protection area, no person or entity has taken any affirmative steps to prevent the potential contaminant from invading the wellhead protection area.

No adequate reason has been given as to why the Indy North 2 Alternative – a route that does not invade a wellhead protection area and which already has an existing utility Right of Way corridor – should not be used.

A mitigation plan is not appropriate prevention within the meaning of this state's wellhead protection program; Rockies Express' avoidance of the wellhead protection areas is critical.

Thank you in advance for your time and attention to this important issue. Our trust is in your hands to alter the route of this pipeline. Should you have any questions regarding this letter, please do not hesitate to contact my office.

Sincerely,

  
Robert J. Bischoff  
Indiana State Representative  
House District 68

Cc: ✓ State Representative Cleo Duncan  
State Senator Robert Jackman  
State Senator Johnny Nugent  
Mr. Scott Stern, GM, Hoosier Hills Regional Water District  
Mr. Herbert Ralph Proffitt  
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March 3, 2008

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

*via e-filing*

Re: Rockies Express Pipeline, L.L.C.  
Proposed REX EAST Project  
FERC Docket CP07-208-000

**Official Comment  
of Elrod Water Company, Inc.,  
d/b/a Hoosier Hills Regional Water District  
In Reply to Rockies Express'  
Response to FERC's February 8 Environmental Information Request  
And  
To Newly-Disclosed Developments**

Dear Commissioners:

Elrod Water Company, Inc., d/b/a Hoosier Hills Regional Water District ("Hoosier Hills") submits this Reply to Rockies Express' ("REX") Response to FERC's February 8 Environmental Information Request, which REX filed with FERC on February 19, 2008. This Official Comment further submits its grave concerns with information disclosed this day by counsel for REX.

Hoosier Hills first expresses its appreciation for FERC's efforts to require full and complete responses from REX, including but not limited to FERC's January 18, 2008 letter advising REX of its responsibility to provide all requested information before a schedule can be advanced. We are likewise concerned that crucial information has yet to be provided, note certain factual inaccuracies in what has been provided to FERC, and bring to FERC's attention a startling development not yet revealed to FERC by REX: *REX has announced to the Natural Resources Commission (NRC) of the Indiana Department of Natural Resources (IDNR) a change in the depth at which it intends to bury its proposed pipeline, placing it squarely in Hoosier Hills' aquifer.*

REX's Response to FERC's February 8, 2008 Information Request leaves unresolved many of Hoosier Hills' concerns, and in fact establishes the validity of some of our concerns. As a result, Hoosier Hills continues to oppose the location of the Rockies Express ("REX") pipeline as currently proposed because of the unreasonable risk of contamination of its public water supply, both during construction and afterward during operations.

REX's response to Environmental Information Request Number 6 does not allay our concerns, as its proposed mitigation is at times incomplete, and at others insufficient.

#### REX's Response is Incomplete:

REX states in Response to Information Request Number 6 that it "will implement a project specific Spill Prevention, Containment, and Countermeasure (SPCC) Plan but does not provide that plan, stating only that it "outlines specific preventative measures and practices that will be implemented to reduce the likelihood of an accidental release of a hazardous or regulated liquid and, in the event such a release occurs, to expedite the response to and remediation of the release." A search of the eLibrary docket does not indicate that REX's SPCC Plan has been separately filed with FERC. Hoosier Hills requests to be provided a copy of REX's SPCC Plan, and further requests an opportunity to review and comment on REX's Plan, if and when it is filed with FERC.

REX's answer in Number 7 articulates no specific measures to mitigate impacts on the aquifer at issue, referring instead to the documents containing general procedures enumerated in its answer to No. 6. In addition, REX fails to provide FERC with the depth of the aquifer where the pipeline would cross as requested by FERC. Thus, REX has failed to establish that its proposed location of the pipeline is appropriate.

#### REX's stated plans are insufficient to protect Hoosier Hills' water supply:

REX states that it "will avoid storing hazardous materials and refueling equipment within 400 feet of the Hoosier Hills WPA." Such a plan is simply insufficient. It is not far enough away from a hydrogeology perspective to protect the aquifer, as 400 feet is clearly within the one-year Time of Travel. In order for hazardous materials to pose no risk of contamination of HH's WPA, they not only must be stored outside the 5 year Time of Travel; hazardous materials must not be used within the 5 year Time of Travel.

Further, as noted in our Official Comment, contamination is not limited to spills of hazardous materials such as gasoline, antifreeze, petroleum or drilling mud. It can be from Rockies' construction activities introducing from the farmland surface. REX's February 19 assurances as noted above reveal nothing that protects against the contamination by *Cryptosporidium*, *Giardia*, nitrates, pesticides, herbicides, and even *e Coli* from their use of the Open Cut method on the surface of this agricultural area.

**REX's responses to FERC's Information Requests Numbers 8 and 9 further establish the inappropriateness of REX's plans affecting Hoosier Hills.**

In REX's Response to FERC Request Number 9 it notes that REX has determined, by obtaining geotechnical information on the White River that a horizontal directional drill (HDD) of the White River is not feasible, since the area is mostly sand and gravel and would not support a successful HDD. REX also notes in Number 6 that the aquifer which supplies Hoosier Hills' water "is composed of sand and gravel outwash deposits ranging in thickness from 10 to 100 feet." REX also acknowledges that an open-cut crossing of the White River is unacceptable.

The geotechnical information for the Whitewater River is the same as for the White River. Just like the area of the White River, the area of the Whitewater River is also mostly sand and gravel. An HDD of the Whitewater River is not feasible for the same reasons that it is not feasible for the White River.

An additional complicating factor for REX, however, is the fact that REX's proposed alternative crossing method, the dry crossing method (i.e., dam and pump, or flume) is also not appropriate for crossing the Whitewater River, since that method would cause decreased well yields, decreased water quality, interference with well mechanics, and complete disruption of a well's function. This means that REX's activities will cause an impermissible interruption of the groundwater, depriving Hoosier Hills' ratepayers of their only source of potable water.

**REX is operating on inaccurate information.**

Some of REX's misapprehensions as to the propriety of its proposed plans may be grounded in its misunderstanding of the location of Hoosier Hills' WPA. REX's mistaken notions are evidenced in Table 49-1 which it filed with FERC on January 14, 2008, where the milepost designations indicate that REX has possibly confused Hoosier Hills Regional Water District with the North Dearborn Water Corporation. Despite the fact that Hoosier Hills advised FERC and REX in its January 8, 2008 presentation and its January 12, 2008 Official Comment that Hoosier Hills' location at milepost 393-394, not post 395-396, REX continues to operate under the misbegotten notion as to our location.

**The unreasonable risk of harm remains.**

Hoosier Hills reiterates its concerns with and opposition to the current proposed route of the REX pipeline because of the unreasonable risk of contamination of its public water supply, both during construction and afterward during operations. The risk that the location of this pipeline currently poses is an unreasonable one, especially given the fact that reasonable

alternative routes are already in place and available to REX, where a pipeline corridor has already been established, the safety of which has already been vetted, and where the environmental risks are fewer.

**The adverse risks have been exacerbated by REX's heretofore undisclosed plans for the pipeline to invade the Hoosier Hills aquifer.**

As a result of the newly-announced depth at which REX intends to bury its proposed pipeline into Hoosier Hills' aquifer that REX confirmed this day to the Indiana Department of Natural Resources, Hoosier Hills is more deeply concerned about the propriety of the proposed pipeline.

Despite the fact that FERC requested specifically of REX in Request Number 7 to Describe the type of aquifer and its depth where the pipeline would cross, REX has failed to notify FERC that the depth at which it intends its proposed pipeline to be buried is forty (40) feet, not four (4) feet as previously maintained. This change is in direct contravention to REX's Agricultural Impact Mitigation Plan found at I-6 of the DEIS.

Counsel for REX at a Prehearing Conference before the Indiana Department of Natural Resources Natural Resources Commission, Administrative Law Judge Sandra Jensen presiding, in Application # FW-24514 this morning confirmed to Judge Jensen that its previous representations of intending to bury the proposed pipeline at a depth of four (4) feet were incorrect: that in fact, the proposed pipeline will be directly in our aquifer.

This development is highly disturbing on multiple levels: first, the fact that their representations since the inception of FERC's approval process contained such a grievous error is problematic, since FERC's analysis of the impact of this proposed pipeline, and its conclusions and approvals embodied in its draft EIS was based in part on REX's faulty representations. Secondly, it calls into question the accuracy of the remainder of REX's representations to FERC and to the entities adversely affected by REX's venture. Third, the proposed location of the pipeline at forty (40) feet below the Whitewater River bed places it squarely in the Hoosier Hills aquifer. Such a location raises a host of adverse impacts not heretofore contemplated: the construction process to place a pipeline forty (40) feet below the river bed in sandy soil will have severe adverse environmental impacts; a pipeline sitting in an aquifer will corrode in and contaminate our water supply; condensation from the natural gas, which will contain compounds including but not limited to toluenes and butenes, will drip into the pipeline's traps and into the water supply, contaminating it; and, the fluctuating water pressure impinged on the aquifer by our pumps will put stressors on the pipe not contemplated or accounted for given the thinner gauge pipe allowed by the DOT, causing pipe failures.

None of these possible impacts have been vetted by the FERC approval process. FERC has - indeed, we all have - been deprived of the opportunity to consider and/or address the monumental risks this change presents. This development calls for a complete halt to the process and reconsideration of the route as currently slated.

REX's limited answers to FERC's narrowly-crafted Information Requests have allowed REX to evade addressing the specific issue Hoosier Hills previously raised as to the contamination of our aquifer.

FERC's Environmental Information Requests were narrowly-tailored to address specific points, such as the distances between Wellhead Protection Areas and any proposed aboveground facility. While such information may certainly be relevant to certain inquiries, the crafting of such narrow questions allowed REX to avoid addressing the grave issues of concern posed by Hoosier Hills in its January 12, 2008 Official Comment: namely, that the close proximity of the proposed pipeline to the Hoosier Hills water supply poses very real and unreasonable risks of contamination to the water supply, both during construction and during operation. Hoosier Hills' concerns have not been addressed. NEPA requires that they be addressed.

As FERC is well aware, § 101 of NEPA provides the following instruction:

Congress . . . declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures . . . in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

42 USC §4331.

No requirements of present and future generations of Americans can be fulfilled without water. Practicable means and measures exist for FERC, in cooperation with State and local governments and entities such as Hoosier Hills Regional Water District, vested with the responsibility of preserving the potability and integrity of the public water supply, to create and maintain conditions under which we can co-exist with nature. If the above-stated policy of the Federal Government necessitates a re-route of the proposed pipeline, then so be it. FERC will have done its duty, as will have REX. It is a proper exercise of the duty belonging to all of us.

Therefore, for the reasons set forth above and in its official Comment filed January 12, 2008, Hoosier Hills Regional Water respectfully requests that this Commission:

1. Take pause, returning the process to its original, more deliberate, pace;
2. Vet fully all facts and conditions posed by this venture as the have been revealed;
3. Reject the current proposed route through southeast Indiana; and
4. Reconsider the feasibility and substantial merits of the Indy North 2 Alternative, or any other route safely away from our water supply.

Thank you very much for your time and consideration. Should you have any questions or concerns, or wish to discuss the above-raised issues, undersigned counsel is available.

Respectfully Submitted,

ELROD WATER COMPANY, Inc., d/b/a  
HOOSIER HILLS REGIONAL WATER DISTRICT

/s/ Gregory Dole

Gregory Dole  
President, Board of Directors  
Elrod Water Company, Inc., d/b/a  
Hoosier Hills Regional Water District

/s/ Peter Campbell King

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