

**SOMMER BARNARD PC**

06-1142-6A- BIN 4

**FILE**

Robert R. Clark  
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March 27, 2008

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

PUCO

2008 MAR 31 PM 2:50

RECEIVED-DOCKETING DIV

Re: Biological Assessment for the REX-East Project and Request for  
FWS Concurrence and FOIA Request  
CP07-208-00

Dear Secretary Bose:

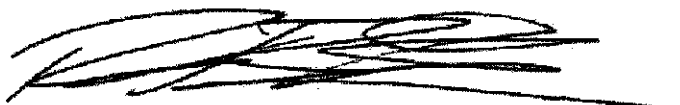
I am responding to FERC's Submittal of Biological Assessment for the REX-East Project to the U.S. FWS as FERC's Submittal relates to my client Dave McCarroll's interests. FERC's Submittal purports to address a biological assessment of the Indiana bat and potential effects by the REX-East Pipeline. However, no documentation or actual analysis is evident in the letter published in the online docket.

The letter indicates that REX-East, the party seeking the certificate of public convenience and necessity, has served as FERC's "non-federal representative . . . [in] conducting informal consultation[s]" with FWS. Mr. McCarroll objects to FERC's appointment of REX-East as its representative. REX-East's financial interests are directly affected by the FERC and FWS decisions involving endangered species, including the location of the pipe, construction methods for the pipe, mitigation measures for endangered species, and time-frame in which to construct the pipe. REX-East has no incentive to protect the endangered species, especially if actions to protect the species require additional effort or conflict with REX-East's plans for pipeline construction.

The new conclusions in FERC's March 25, 2008 letter, that the project "may affect, not likely to adversely affect" the Indiana bat, contradict FERC's conclusions from its November 23, 2007 Draft EIS, that the project is "likely to adversely affect" the Indiana bat. See Draft EIS at Table 4.7-1. Such an abrupt change of position surely follows documented analysis that addresses the reasons why FERC's conclusions could vary so greatly. Therefore, I have enclosed with this letter a FOIA request, which seeks information relating to FERC's determinations of effect and biological assessment. I insist that FERC explain its dramatic change of position.

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business.  
Technician Sm Date Processed 3/31/08

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Clark', with a long horizontal flourish extending to the right.

Robert R. Clark

RRC/mma

cc: Dave McCarroll  
Andy Black, Chief FOIA Officer  
CP07-208 Service List

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## **SOMMER BARNARD PC**

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March 27, 2008

Andy Black, Chief FOIA Officer  
Federal Energy Regulatory Commission  
8888 First St., N.E.  
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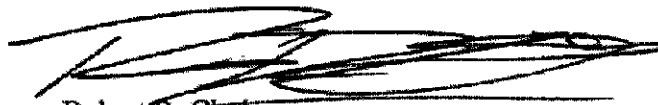
Re: FOIA Request Regarding Biological Assessment for REX-East Pipeline  
Project  
Docket No. CP07-208-00

Dear Mr. Black:

This law firm represents Dave McCarroll as his interests relate to the REX-East Pipeline Project. Mr. McCarroll requests that you provide all documents and records relating to FERC's reports, studies, and meetings for the biological assessment ("BA"), and the BA itself, which was submitted by FERC to the United States Fish & Wildlife Service via correspondence dated March 25, 2008.

Specifically, please send all documents relating to the BA. This request includes the enclosure to the March 25, 2008 letter, any studies or reports conducted or generated by FERC, REX-East, or any of their representatives, relating to the Indiana bat around Mr. McCarroll's property, and all records, notes, or minutes from meetings during which the Indiana bat and Mr. McCarroll's property have been discussed. For each record, please include a list of all contributing parties and identify individuals present and their affiliation at each meeting. Include with your identification of individuals full names and contact information, including address and telephone number. This information is requested pursuant to the Freedom of Information Act § 552. I agree to pay reasonable fees for copies.

Very truly yours,



Robert R. Clark

RRC/mma

cc: Dave McCarroll  
Kimberly D. Bose, Secretary  
CP07-208 Service List

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Document Content(s)

McCarroll response to BA.PDF.....1-2

McCarroll FOIA Request to Andy Black.PDF.....3-3