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July 2, 2008

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

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

Dear Ms. Bose:

In its Order Issuing Certificate, issued in the above-captioned proceeding on May 30, 2008 (the "Order"), the Commission imposed Environmental Condition 50, which reads:

Prior to the start of construction, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a Mining Subsidence Plan that at a minimum addresses the following:

- a. this plan shall indicate how areas where the pipeline would cross underground mines would be monitored during the life of the project and what steps would be taken if the area were to destabilize in the future; and
- b. communications with mining companies planning to use longwall or room and pillar mining techniques in areas of the pipeline. The plan shall outline the monitoring protocol and mitigation measures that may be implemented to prevent subsidence impacts from these specific types of mining to the pipeline.

The Commission further described Condition 50 as "requir[ing] Rockies Express to consult with the mining companies prior to the start of construction." Order at par. 93. The Commission went on to list a number of "measures" that REX has "developed to address the coal industry's concerns," including: "the use of Class 2 pipe in mining areas that are designed to better withstand stresses from ground subsidence, the installation of mainline valves that will automatically close in

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This is to certify that the information contained herein is true and correct and that the undersigned is a duly qualified and experienced engineer or geologist and is duly licensed by the State of Colorado. The undersigned hereby certifies that the information contained herein is true and correct and that the undersigned is a duly qualified and experienced engineer or geologist and is duly licensed by the State of Colorado. The undersigned hereby certifies that the information contained herein is true and correct and that the undersigned is a duly qualified and experienced engineer or geologist and is duly licensed by the State of Colorado.
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response to a sudden drop in pressure, the use of granular backfill around the pipe to reduce potential ground friction during a subsidence event, and potential re-routing of the pipe around specific topographic features such as steep hills." *Id.* These are some of the measures that Rockies Express Pipeline LLC ("REX" or "Rockies Express") had identified in its May 8 responses to the Commission's data requests of May 5, 2008.

On June 19, 2008, REX filed its purported compliance with Environmental Condition 50, its Plan for Monitoring and Mitigating Impacts from Mining Subsidence (the "Plan"). This Plan is surprisingly brief and superficial, lacking technical support or any detail as to the demonstrated effectiveness of mitigation measures under conditions similar to those expected here. REX does note that it "does not intend this plan to serve as its response to Certificate Condition No. 147 – the Murray Mining area" and indicates that it "is working with Murray Mining to actively address their concerns about the REX-East project." Transmittal Letter, June 19, 2008, at 2. The Plan itself also states, "A separate plan is being developed in collaboration with Murray Mining to deal with anticipated subsidence over areas that will be mined by Murray Mining using the long wall mining technique. This plan will be filed at a later date." Plan at 2. Murray Energy Corporation *et al.* ("Murray") remains hopeful that it will indeed be able to reach a resolution with REX under the terms of Environmental Condition 147. However, that does not obviate an adequate plan under Condition 50, and REX's first attempt at that plan appears to fall well short of what the Commission asked for and what is needed.

The Condition 50 Plan as filed does not address at all the portion of the Condition that called for it to describe "communications with mining companies planning to use longwall or room and pillar mining techniques in areas of the pipeline." Nor did REX "consult with the mining companies" (Order at par. 93) in its preparation. The Plan reflects a barely elementary level of knowledge of mining techniques and practices. It consists mostly of a primer-level description of how subsidence occurs rather than of measures to address it in the context of an operating pressurized gas pipeline with variable conditions such as steep slope topography. It does not even incorporate the steps promised in REX's May 8, 2008, data responses and relied upon by the Commission in Paragraph 93 of the Order. Moreover, it does not specify when mitigation measures would necessitate temporary reductions in pipeline gas pressures.

Murray recognizes that REX has attempted to carve out Murray's issues and not deal with them in this Plan, but rather reserve them for the Condition 147 plan (which has not yet been filed). Nevertheless, Murray is concerned that the Condition 50 Plan falls well short of what the Commission ordered. The two Environmental Conditions are separate and independent and serve different

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purposes. If approved as filed, the Condition 50 Plan would apply to Murray (along with the Condition 147 plan) as well as other mining operations, and could also become a precedent or model for mitigation plans for other pipeline projects. It is simply far too general and superficial to achieve the Commission's objectives. It also confirms the need for mining industry input into both plans to supply the technical mining knowledge which neither REX nor its consultants evidently possess. If the Commission were to approve the Condition 50 Plan as filed, it could create the appearance that a similarly skeletal plan would suffice under Condition 147, which is most certainly not the case.

Murray respectfully urges the Commission not to approve the Condition 50 Plan as filed unless and until REX supplements it by, at a minimum, incorporating all of its May 8 responses to the Commission's data requests. The supplemental plan should also include detail and technical support for the measures REX intends to undertake, as well as evidence of their demonstrated effectiveness where they have been used in practice on other projects with similar conditions.

Respectfully submitted,



Jennifer N. Waters
R. Timothy McCrum
Counsel for Murray Energy Corp. et al.

cc: All parties on the official FERC service list

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