

06-1142-GA-BIN



Indiana Department of Natural Resources

Mitchell E. Daniels, Jr., Governor
Robert E. Carter, Jr., Director

Division of Historic Preservation & Archaeology-402 W. Washington Street, W274 - Indianapolis, IN 46204-2739
Phone 317-232-1646-Fax 317-232-0693 - dhpa@dnr.IN.gov

July 16, 2008

ORIGINAL

Ellen Saint Onge
Federal Energy Regulatory Commission
888 First Street Northeast
Washington, D.C. 20426

Federal Agency: Federal Energy Regulatory Commission

Re: Revised Memorandum of Agreement (MOA) pertaining to the Rockies Express Pipeline LLC's installation of a 622 mile long natural gas pipeline through Illinois, Indiana, and Ohio (FERC Docket #PF06-30-000; DHPA#1562)

Dear Ms. Saint Onge:

Enclosed please find the memorandum of agreement ("MOA") for the above indicated project in Vermillion, Parke, Putnam, Hendricks, Morgan, Johnson, Shelby, Decatur, and Franklin counties, Indiana. As you know, the review of this project is being conducted pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f) and implementing regulations found at 36 C.F.R. Part 800. Ron McAhron, Deputy Director of the Department of Natural Resources, on behalf of Robert E. Carter, has signed the enclosed MOA, indicating his approval of the agreement.

We are returning the MOA to you, so that it may be transmitted with the accompanying documentation specified in 36 C.F.R. § 800.11(f) to the Advisory Council on Historic Preservation (36 C.F.R. § 800.6[b][iv]). The MOA may be transmitted to:

Don L. Klima, Director
Eastern Office of Project Review
Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania Avenue, N.W. #809
Washington, D.C. 20004

If you have questions about our comments, please contact Cathy Draeger at (317) 234-3791 or cdraeger@dnr.IN.gov. In all future correspondence regarding the above indicated project, please refer to DHPA #1562.

Very truly yours,

Ron McAhron
James A. Glass, Ph.D.
Deputy State Historic Preservation Officer

JAG:CLD:cdl

Enclosures (1)

cc: Kimberly Boas, Federal Energy Regulatory Commission
cmc: Karl Kraus, Natural Resource Group, Inc.

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**MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL ENERGY REGULATORY COMMISSION, THE
INDIANA STATE HISTORIC PRESERVATION OFFICE, AND ROCKIES
EXPRESS PIPELINE LLC,
REGARDING THE ROCKIES EXPRESS EAST PROJECT
IN INDIANA**

**Rockies Express Pipeline LLC -- Rockies Express East Project
Docket No. CP07-208-000**

Federal Energy Regulatory Commission

Whereas, the Federal Energy Regulatory Commission (FERC or Commission) acknowledges and accepts the guidance outlined in the Advisory Council on Historic Preservation's (Council) "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites," published in the Federal Register on May 18, 1999 (vol. 64, no. 95, p. 27085) as part of its revised regulations (36 CFR Part 800) for implementing Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA, 16 U.S.C. 470); and

Whereas, the consulting parties, which include the FERC, the Indiana State Historic Preservation Office (SHPO), and Rockies Express Pipeline LLC (Rockies Express) agree that it is in the public interest to implement this project; and

Whereas, the FERC has determined that several archaeological sites considered eligible for the National Register of Historic Places may be adversely affected by the project; and

Whereas, the consulting parties agree that recovery of significant information from these archaeological sites shall be done in accordance with the Council's guidance to satisfy Part 800.6; and

Whereas, Rockies Express documented consultations with Indian tribes that may attach religious or cultural importance to properties in the project area, and no objections have been raised to the work proposed; and

Now, therefore, the FERC shall ensure that the following terms and conditions, including the measures outlined in approved archaeological treatment plans referenced below, will be implemented in a timely manner and with adequate resources in compliance with the NHPA.

Stipulations

- A. Rockies Express shall ensure completion of all Phase I surveys, including deep testing, all temporary and permanent right-of-way, any additional re-routes, extra work spaces, access roads and other areas as needed.**
- B. Rockies Express shall ensure completion of all outstanding Phase II evaluations on properties that may be identified during any additional Phase I survey as necessary.**
- C. Reports of all outstanding Phase I and Phase II archaeological investigations shall be submitted to the FERC and the SHPO for review of the sites' eligibility to the National Register of Historic Places.**
- D. If, after consultation, the SHPO, the FERC, Rockies Express, and any additional consulting parties, agree that avoidance is not feasible, Rockies Express shall ensure completion of Phase III mitigation of all eligible sites in accordance with the treatment plans submitted to SHPO and the FERC. The treatment plans, including the proposed plans for data recovery, shall be submitted by Rockies Express to the SHPO and to FERC for thirty (30) days review and approval prior to the commencement of any phase III mitigation investigations.**
- E. Rockies Express shall ensure that the data recovery plans addressing substantive research questions are developed in consultation with the Indiana SHPO, the FERC, and any additional consulting parties, for the recovery of relevant archaeological data. The plans shall be consistent with the "Secretary of the Interior's Standards and Guidelines for Archaeological Documentation" (48FR 44734-37), the most current Guidebook for Indiana Historic Sites and Structures Inventory--Archaeological Sites, and take into account the Council's publication, Treatment of Archaeological Properties. They shall specify, at a minimum, the following:**
 - 1. the property or portion thereof where data recovery is to be carried out;**
 - 2. the research questions to be addressed through the data recovery, with an explanation of their relevance and importance;**
 - 3. the methods to be used, with an explanation of their relevance to the research questions; and**
 - 4. proposed methods of disseminating results of the work in the interest of the public.**
- F. Rockies Express shall ensure that the data recovery plans are carried out by or under the direct supervision of an archaeologist who meets, at a minimum, the "Secretary of the Interior's Professional Qualifications Standards" (48FR 44738-9).**

- G. All archaeological investigations must conform to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation" and the most current Guidebook for Indiana Historic Sites and Structures Inventory-- Archaeological Sites
- H. Management summaries of all phase III archaeological investigations must be submitted to the FERC and the SHPO for review and approval prior to the commencement of construction activities.
- I. Final reports must be submitted to the FERC and the SHPO for review within two (2) years of the completion of the fieldwork.
- J. Curation of records, artifacts, and other items resulting from identification, evaluation, and data recovery efforts shall meet the level of 36CFR79.
- K. Rockies Express shall ensure that the selected use of wooden mats to transport equipment and machinery through a travel lane across selected portions of eligible archaeological sites shall not damage these sites where this method is utilized. These locations shall be submitted to the FERC and the SHPO for review and approval.
- L. Modifications of project activities after the start of construction will be reviewed on a limited basis by the FERC and the SHPO with the following conditions:
 - 1. All areas will be archaeologically and architecturally investigated. Even if archaeological resources are not encountered during these investigations, a summary of the archaeological investigations will still be required. If any cultural resources are encountered, then a formal review will be necessary.
 - 2. The archaeological investigations must be done in accordance with the "Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation" (48 F.R. 44716) and must be directly supervised in the field by an archaeologist meeting the "Secretary of the Interior's Professional Qualifications Standards".
 - 3. If architectural resources not previously identified are present, information on those resources that may be potentially eligible for the National Register of Historic Places must be provided to our office for review.

Other Terms and Conditions

Unanticipated Discoveries

A plan for dealing with unanticipated discoveries of historic properties and human remains has been prepared for the project and will be implemented in the event of such a discovery. In the event of the discovery of unanticipated human burials, the SHPO, the FERC, and as appropriate, the Indian tribes consulted with, will be notified. If the burial is not a crime scene, as determined by the county coroner and local law enforcement officials, then the site will be treated in accordance with the provisions of the Indiana Historic Preservation Act (Indiana Code 14 Article 21) as amended by Public Law 175 (1989), the Indiana General Cemetery Act (Indiana Code 23 Article 14), and Title 312 of the Indiana Administrative Code, Article 22 (2001). If an unanticipated discovery of Native American human remains occurs on federal land, the procedures outlined in the Native American Graves Protection and Repatriation Act will be followed.

Amendments

Modification, amendment, or termination of this agreement, as necessary, shall be accomplished by the consulting parties in the same manner as the original agreement.

Dispute Resolution

Disputes regarding the completion of the terms of this agreement shall be resolved by the consulting parties. If the consulting parties cannot agree, any one of the consulting parties may request the participation of the Council to assist in resolving the dispute.

Termination

This agreement shall be null and void if its terms are not carried out within five (5) years from the date of its execution, unless the consulting parties agree in writing to an extension.

SIGNATORIES

Federal Energy Regulatory Commission

By: _____ Date: _____
Title: Director, Division of Gas-Environment and Engineering, Office of Energy
Projects

Indiana State Historic Preservation Office

By: Ray M. Salton Date: 7-16-08
Title: Deputy Director IONIC

Rockies Express Pipeline LLC

By: _____ Date: _____
R. Douglas Walker
President