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2008 AUG 12 AM 7:37

PUCO

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(1927-2007)*

August 7, 2008

Commissioners
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

via eFiling

J. Mark Robinson, Director
Federal Energy Regulatory Commission
Office of Energy Projects
888 First Street, NE
Washington, DC 20426

via FAX: 202-219-0205

RE: Rockies Express Pipeline, L.L.C.
Docket No. CP07-208-000

Dear Commissioners and Director:

Please withhold your authorization to proceed with construction on Spread F. REX has not complied with service requirements for notice to affected parties, and has not fulfilled conditions of the Certificate. Withholding your authorization pending fulfillment of the conditions is the only way to ensure compliance.

Indicating so in "cc" of its August 1 filing notwithstanding, REX did NOT serve this document upon Hoosier Hills, on August 1 or any date thereafter. Hoosier Hills' first notice of REX's August 1 submission to the FERC occurred today, August 7, 2008 at 12:55 p.m., EDT, when Hoosier Hills' counsel received the FERC eSubscription notice of filing. REX's failure to serve Hoosier Hills, as required under the pertinent regulations, has significantly hampered Hoosier Hills' opportunity to be heard as to this issue.

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The notice we received today reflects that Rex seeks permission to commence construction with its HDD at Hoosier Hills' aquifer tomorrow, August 8, 2008. Yet, none of the following conditions relative to Hoosier Hills' aquifer put forth by the FERC in its Certificate of Public Convenience and Necessity have been satisfied.

Rex represents that it will not commence construction in the areas of Spread F "where surveys or agency clearances are pending." Such is the case with the Whitewater River crossing, as REX's DNR Flood Control permit is in administrative review, the first step in exercising appellate rights. One can easily expect that where the parties differ in opinion as to whether Rex has obtained requisite local or state permits or approvals, or whether it is required to obtain same, Rex could or would commence construction upon receiving authority to proceed, regardless of the above caveat. REX's noncompliance with its service requirements indicates that noncompliance can occur, intentionally or not. The only way to ensure that construction is not commenced where the above conditions have not been met is to withhold authority to proceed.

The following are Certificate Conditions that REX has not fulfilled. The text in bold was so formatted in the original. The bullet points below each condition provide the Commissioners and Director with further explanation:

19: Rockies Express shall develop a Hydrostatic Testing Plan that includes, but is not limited to, the following information:

- a. The screen size proposed for use on intake hoses to prevent entrainment of fish; and
- b. documentation that appropriate federal and state agencies have been consulted regarding the establishment of water withdrawal rates to ensure the withdrawals would have minimal impact on flows, fisheries, and downstream water users.

This Hydrostatic Testing Plan shall be filed with the Secretary, for review and written approval by the Director of OEP, **prior to the start of construction.**

- ☐ Hoosier Hills is not aware of any written approval by the Director of OEP relative to this plan.
- ☐ REX has not consulted with the Whitewater River Advisory Board

56: Rockies Express shall develop a site-specific specialized spill plan that would further reduce the likelihood of spills/leaks from construction-related equipment impacting the Hoosier Hills WPA. This plan shall be in addition to Rockies Express' SPCC Plan and shall contain a list of all fluids that would be used during construction in the area.

Rockies Express shall file this plan with the Secretary, for review and written approval of the Director of OEP, **prior to the start of construction** between MPs 393 and 394.

- ☐ Hoosier Hills is not aware of any written approval by the Director of OEP relative to this plan.

57: Rockies Express shall develop a water quality testing plan for Hoosier Hills' existing wells in consultation with Hoosier Hills. This plan shall include water quality testing **prior to, during, and for two years post construction** to document any construction-

related impacts on the Hoosier Hills WPA. Rockies Express shall file a finalized plan with the Secretary **prior to the start of construction**. Copies of the water quality test results shall be provided to Hoosier Hills.

- ☐ The water quality testing plan is not completed. Hoosier Hills has repeatedly attempted to effectuate the consultation mandated by Condition 57, and has been consistently ignored. No finalized plan has been filed with the Secretary. It remains unsubstantiated that REX has filed *any* water quality testing plan; if anything, REX filed its *draft* plan, which it created unilaterally, also in violation of Condition 57.
- ☐ No water quality testing has occurred in the Whitewater River. Thus, if construction commences as REX requests, they will have committed another violation of Condition 57, which requires pre-construction testing.

58: Rockies Express shall notify Hoosier Hills at least **48 hours prior to the start of construction** between MPs 393 and 394.

- ☐ Hoosier Hills has received no notification from REX of any intent to commence construction between MPs 393 and 394.

59: **Prior to the start of construction**, Rockies Express shall file with the Secretary documentation of consultations with applicable local and state agencies regarding construction in areas with WPAs or other groundwater management areas crossed by the pipeline.

- ☐ Rex has not consulted with the Whitewater River Advisory Board, and still does not have approval from Franklin County Drainage Board

64: **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, revised site-specific crossing plans that identify specific restoration and mitigation measures applicable to each sensitive waterbody crossing listed in Tables 4.3.5-1 and 4.6.2-1 of the final EIS and any applicable state and federal agency consultations.

- ☐ The Whitewater River is included in Table 4.6.2-1 of the FEIS.
- ☐ Hoosier Hills has not seen a revised site-specific crossing plan site-specific to the Whitewater River crossing that identifies specific restoration and mitigation measures and any applicable state and federal agency consultations.
- ☐ Hoosier Hills is not aware of any written approval by the Director of OEP relative to this plan.

78: **Prior to the start of construction**, Rockies Express shall file with the Secretary a copy of its Flood Control Permit from the INDNR.

- ☐ Its Flood Control Permit for the Whitewater River crossing is still in Administrative Review with the Natural Resources Commission
- ☐ The record does not indicate that the permit at issue has been filed with the Secretary.

Hoosier Hills is concerned that documents relevant to the Whitewater River crossing have been withheld from public view by their inclusion with material containing location, character and ownership information about cultural resources which, under Condition 141 and federal regulations, must be filed as "privileged". If this practice did in fact occur, then Hoosier Hills' ability to bring errors/omissions to the attention of the OEP has been hampered, and necessary discourse and transparency has been impeded. Accordingly, we ask that, before granting authorization to proceed with construction, you issue an order compelling REX to serve counsel for Hoosier Hills with any and all documents pertaining to Hoosier Hills' water source and previously withheld from Hoosier Hills. REX will not be harmed by such an equitable order.

There is no immediate rush for your authority to be granted, if the representations of Rex spokesperson Allan Fore are true. Please see the attached article from the August 6, 2008 Brookville Democrat, where Mr. Fore has assured the newspaper's editor that *REX construction in Franklin County will not commence before October 1, 2008*. He further explains that REX is still in the process of obtaining its Section 401 certification process in the state of Ohio, and does not expect that certification to conclude before late September.

The certificate authority is conditioned on Rockies Express' compliance with the environmental conditions listed in Appendix E of the FERC order. FERC Certificate, pp. 49-50, Order at (B)(4). Condition No. 2 delegates to the Director of OEP "the authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the REX-EAST project." This authority includes "stop-work authority to assure the continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation." The best way to assure compliance is the approach we request: withhold the authorization.

For all of these reasons, Hoosier Hills respectfully requests that you enforce the conditions set forth in the Certificate of Public Convenience and Necessity, and withhold your granting of authority to proceed until such time as all conditions have been satisfied.

Thanking you for your time and consideration, I remain

Cordially,

Peter Campbell King

/s/

Peter Campbell King

PCK/TBW

Cc: Sen. Richard G. Lugar
Sen. Evan Bayh
Rep. Baron Hill
Rep. Mike Pence

WEDNESDAY, AUGUST 6, 1995

REX construction delayed for Franklin County

By John Estep

FERC

REX construction in Franklin County will not begin until October 1.

Construction on the 100-mile, 1,100-turbine project is moving from the state to private. OGE will stop all Franklin County projects in 1995. The project is being built by the state. The project is being built by the state.

FERC is currently working to complete the 100-mile project. The project is being built by the state. The project is being built by the state.

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REX construction in Franklin County will not begin until October 1.

Document Content(s)

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