

DL-1142-GABIN



August 15, 2008

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

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PUCO

RE: Docket No. CP07-208-000  
Rockies Express Pipeline LLC, REX-East Project  
Clarification of Condition Nos. 87, 92 and 98

Ms. Bose:

On May 30, 2008, the Federal Energy Regulatory Commission ("FERC" or "Commission"), pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations, issued Rockies Express Pipeline LLC ("Rockies Express") a certificate of public convenience and necessity to construct and operate the REX-East project ("May 30 Order" or "Order").<sup>1</sup> On June 2, 2008, Rockies Express, pursuant to Section 157.20(a) of the Commission's Regulations, 18 C.F.R. § 157.20(a), notified the Commission that it accepted the Commission's Order.

The May 30 Order authorizes Rockies Express to construct and operate the REX-East project subject to identified conditions contained in the Appendix to the Order. In accordance with Condition No. 1 to the Order, Rockies Express requests modification and clarification to Condition Nos. 87, 92 and 98 for the review and written approval of the Director of OEP.

Condition No. 87 states, "For the habitat unit IDs surveyed in 2007 and for which Indiana bats were identified but no nursery roost trees were identified, Rockies Express shall implement the following recommendations and conditions to avoid direct effects on Indiana bat roosting in alternative roost trees:

- a. Remove trees during the inactive season (between October 1 and March 31);  
or
- b. Remove trees while bats are foraging under the following conditions:
  - i. tree removal would occur between one hour after sunset and one hour before sunrise;

<sup>1</sup> Rockies Express Pipeline LLC, 123 FERC ¶ 61, 234 (2008)

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- ii. temperature would be greater than 50° F; and
- iii. no precipitation or strong winds (as before an approaching thunderstorm)."

It has been understood that the remaining trees, those that are not alternative roost trees, within the habitat unit would be cleared following the removal of the alternative roost trees in accordance with Condition No. 87. However, Rockies Express believes this creates potential safety issues and logistical problems in transporting lighting equipment to safely cut the alternative roost trees.

Rockies Express would like to clear paths wide enough to transport lighting equipment into the habitat unit during the day and before the alternative trees are cut to more safely comply with Condition No. 87.

Condition No. 92 states, "During construction, Rockies Express shall not burn trees, limbs, brush, and debris in the right-of-way within 500 feet of the entire area of suitable habitat associated with each habitat unit ID"

Rockies Express believes Condition No. 92 unnecessarily imposes burn restrictions on areas not intended by FWS because the Condition does not specifically identify these restricted locations. Many of the suitable habitat units that were surveyed did not result in captures of Indiana bats. Further, Rockies Express is forced to repeatedly move heavy equipment along its right-of-way, sometimes up to 3,500 feet in length, to move the cleared vegetation to an appropriate location for burning. This activity creates surface conditions that will likely result in less successful restoration due to increased ground compaction in these areas.

As such Rockies Express requests that Condition No. 92 be modified as follows:

"During construction, Rockies Express shall not burn trees, limbs, brush, and debris in the right-of-way within 500 feet of an identified Indiana bat nursery roost tree or site."

Condition No. 98 states, "Rockies Express shall have a FWS qualified biologist supervise tree clearing operation in Indiana bat habitat along the construction areas to ensure that individual bats that may be in the vicinity are not harmed, and all tree clearing activities are in compliance with the FWS's requirements as identified above under Compensation, Mitigation, and Monitoring."

Rockies Express, in its negotiations with the FWS, agreed to have FWS qualified biologists present during clearing activities where Indiana bat roost trees were identified. These habitat units are: TEH-MO-1.0 (Milepost (MP) 0.9 – 1.0), TEH-IN-WR-0.5 (MP 242.9+0.3 – 242.9+4.0), TEH-IN-11.0 (MP 266.5 – 273.9), TEH-IN-19.5 (MP 290.3 – 291.0), TEH-IN-27.8 (MP 335.8 – 336.2) and TEH-OH-10.9 (MP 466.8 – 467.1).

As currently interpreted and implemented, Rockies Express has contracted FWS qualified biologists to supervise tree clearing in many areas that have not been surveyed due to compliance with FWS survey methodology for Indiana bats, and in other areas where no roost trees were identified. Further, Condition No. 98 does not provide satisfactory guidance for the biologists while carrying out this "supervisory" function.

Rockies Express requests that Condition No. 98 agree with the FWS's guidance with respect to this activity (see attached email correspondence) and only apply to the habitat units identified above.

Finally, Rockies Express requests clarification that Condition Nos. 92 and 98 only apply during the active season of Indiana bat presence (April 1 to September 30).

Please direct any questions with respect to this request to Ryan Childs at (307) 760-5635.

Respectfully submitted,

/s/ Mona Tandon  
J. Curtis Moffatt  
Shippen Howe  
Mona Tandon  
Van Ness Feldman, P.C.  
1050 Thomas Jefferson Street, N.W.  
Washington, D.C. 20007

Attorneys for  
Rockies Express Pipeline LLC

Attachments

cc: Alysa Lykens  
Laura Turner  
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All Parties

**From:** "Jennifer\_Szymanski@fws.gov" <Jennifer\_Szymanski@fws.gov>  
**To:** Carly Lapin <cnlapin@nrg-llc.com>  
**Date:** 7/7/2008 5:25:31 PM  
**Subject:** Re: Indiana Bat email for Jennifer S.

Carly,

I agree with your description of when a biological monitor is required. If Rockies Express adheres to the below, FERC and Rockies Express will be in full compliance with the biological assessment.

Let me know if you require further assistance,  
 Jennifer

Jennifer Szymanski  
 U.S. Fish and Wildlife Service  
 Division of Endangered Species  
 Remotely located at:  
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 555 Lester Avenue  
 Onalaska, WI 54650  
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 \*\*\*My work schedule is M, W, Th 6:30 -4:30pm\*\*\*

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 <medha.kochhar@ferc.gov>  
 Subject  
 Indiana Bat email for Jennifer S.

Hello Jennifer,

I am writing to clarify the areas along the Rockies Express Pipeline – East Project route in which Rockies Express anticipates having biological monitors present to supervise tree clearing operations in Indiana bat habitat areas. In compliance with its Biological Assessment, Rockies Express intends to employ a biological monitor with experience in bat ecology in the Indiana bat habitat units where roost trees were identified during mist net and radiotelemetry surveys, and in habitat units where Indiana bats were captured and radiotracked but no roost trees were identified. The monitor will be employed during the season of Indiana bat activity as established by the U.S. Fish and Wildlife Service, extending from April 1 through September 30.

The Indiana bat habitat units that were surveyed by Rockies Express and for which Indiana bat roost trees have been identified include: TEH-MO-1.0 (Milepost (MP) 0.9 – 1.0), TEH-IN-WR-0.5 (MP 242.9+0.3 – 242.9+4.0), TEH-IN-11.0 (MP 266.5 – 273.9), TEH-IN-19.5 (MP 290.3 – 291.0), TEH-IN-27.8 (MP 335.8 – 336.2) and TEH-OH-10.9 (MP 466.8 – 467.1). In these habitat units, Rockies Express will avoid the documented roost trees and their immediate microclimates, which will be determined by a biological monitor with experience in bat ecology. None of the documented roost trees are within the project's construction workspace. In addition, Rockies Express will limit specific construction activities (clearing, trenching, welding, backfilling, and grading) within 300 feet of the documented roost trees from one-half hour after dawn to one-half hour before dusk for the period of tree clearing restriction as identified by the FWS (April 1 – September 30).

The Indiana bat habitat units that were surveyed by Rockies Express where Indiana bats were captured and radiotracked but for which no nursery roost trees were identified include: TEH-MO-3.0 (MP 22.1 – 22.4), TEH-IL-1.0 (MP 52.6 – 52.7), TEH-IN-18.0 (MP 278.5 – 283.0), and TEH-IN-32.0 (MP 376.0 – 392.5). In these habitat units, all potential Indiana bat roost trees within the project's construction workspace have been marked with fluorescent orange "X's" at breast height. In accordance with the biological assessment, these potential roost trees will be removed while bats are foraging, under the following conditions:

- Tree removal will occur between 1 hour after sunset and 1 hour before sunrise;
- Temperature will be greater than 50 degrees Fahrenheit; and
- When there is no precipitation or strong winds (as before an approaching thunderstorm).

The potential roost trees in these habitat units will be removed prior to all other clearing activities and under the supervision of a biological monitor with experience in bat ecology.

Rockies Express believes that, by employing a biological monitor in these areas as outlined above, it will fulfill the requirements as outlined in the Biological Assessment to have a biological monitor with experience in bat ecology present during project activities for the purpose of avoiding

impacts the Indiana bat. Rockies Express does not intend to have a biological monitor present in other areas for the purpose of monitoring for Indiana bats.

Rockies Express respectfully requests your concurrence that these measures will fulfill its obligations for the presence of a biological monitor in order to limit impacts to the Indiana bat.

Thank you for your time,

Carly Lapin

(Embedded image Carly Lapin  
moved to file: cnlapin@NRG-LLC.com  
pic20037.gif)NRG (612) 215-6085 Direct  
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CC: Bart Jensen <BMJENSEN@nrg-llc.com>, "Bertram, Charlie - Rex Projectexternal contact" <cmbertram@yahoo.com>, Carly Lapin <cnlapin@nrg-llc.com>, Elizabeth Dolezal <ENDOLEZAL@nrg-llc.com>, Jim Thompson <jimt@caprock-llc.com>, Jeff Thommes <JRTTHOMMES@nrg-llc.com>, "medha.kochhar@ferc.gov" <medha.kochhar@ferc.gov>, "Childs, Ryan" <Ryan\_Childs@kindermorgan.com>, "TJ\_Miller@fws.gov" <TJ\_Miller@fws.gov>, "Forest\_Clark@fws.gov" <Forest\_Clark@fws.gov>, "Angela\_Boyer@fws.gov" <Angela\_Boyer@fws.gov>

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