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July 31, 2008

ORIGINAL

Ms. Patricia A. Schaub
Acting Director
Office of External Affairs
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426OFFICE OF
EXTERNAL AFFAIRS
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FEDERAL ENERGY
REGULATORY COMMISSIONRe: **REX Pipeline Certificate Issued By FERC (May 30, 2008)**

Dear Ms. Schaub:

We write to you in response to your letter of July 10, 2008, sent to The Honorable Jon A. Husted, Speaker of the Ohio House of Representatives, concerning the Rockies Express East Pipeline Project (FERC Docket No. CP07-208-000). We only recently became aware of your letter, and, accordingly, we are now responding to it. Because this matter is of vital importance to Murray Energy and its independent subsidiary companies, which together produce over one-half of the coal produced in the State of Ohio, we must respond to clarify and correct some statements in your letter.

Murray Energy is very appreciative of the important conditions placed by the Commission in the May 30, 2008 Order issuing the Certificate for the Rockies Express-East Pipeline Project, which conditions are protective of the ongoing and future coal mining operations of Murray Energy in Belmont and Monroe Counties in eastern Ohio. In particular, we are especially appreciative of Environmental Condition 147 as set forth in Paragraph 97 of the Commission's Order. It imposed a mitigation plan requirement and mitigation costs on REX, and stated further that the plan must ensure that "existing and future mining activities" are not compromised. In addition, it imposed a new condition that the mining plan must be developed in collaboration with the Murray Companies. Notably, FERC ordered that if such a plan cannot be developed, FERC will require an alternative route that avoids construction through the mining reserves, as explained in the excerpts immediately below:

97. Nevertheless, we recognize that the differences in technical opinions provided by Rockies Express and the Murray Companies cannot be resolved at this time. Thus, we will adopt a new condition that was not in the final EIS - Environmental Condition 147 - requiring that Rockies Express collaborate with the Murray Companies to develop a construction and operation plan for the segment of pipeline between MPs 621 and 635 that ensures the integrity of the pipeline and does not compromise existing or future mining activities by the Murray Companies. If a plan cannot be developed, we will require that Rockies Express develop and file with the

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Ms. Patricia A. Schaub
July 31, 2008
Page 2

Secretary of the Commission (Secretary) an alternative route that avoids construction through the mining reserves of the Murray Companies.

Your letter of July 10, 2008, does contain a material misstatement, which I presume was inadvertent or incorrectly communicated to you. It requires a correction. Specifically, your letter stated that the "area crossed is not currently being mined, however, the Murray Companies hold mining rights that underlie the area and indicated that mining could occur in the future." In fact, as the Murray Energy submissions to FERC have stated repeatedly, the proposed Rockies Express-East Pipeline Project route would run right through the heart of our *active underground coal mining* operations, as well as future coal reserves which are to be mined.

Furthermore, your letter of July 10 was potentially confusing to the public on the question of whether an alternative route is still being considered to avoid our active coal mine and reserves. Your letter stated that the Commission "did not recommend the alternative route" to avoid the mine property, but as Paragraph 97 of the Commissions Order quoted above makes clear, the issue of whether an alternative route will be required remains an active pending issue yet to be decided. In particular, the Commission's Order quoted above makes it clear that if an acceptable construction and operation plan cannot be developed, that "we will require that Rockies Express develop and file with the Secretary of the Commission ... an alternative route that avoids construction through the mining reserves of the Murray Companies." Although your letter acknowledged this important point, it is important to clarify that the alternative route issue remains very much a pending and live issue to be resolved by the parties and FERC. Murray Energy has provided Rockies Express with detailed alternative routes which would entail minimal net increases to the pipeline route and resource disturbance, *i.e.*, far less than the 12 to 15 mile estimate which Rockies Express previously provided to FERC. In particular, it remains the clear position of Murray Energy that the alternative route is the only demonstrated and feasible plan that will facilitate the REX pipeline project, serve the public interest, and protect the interests of Murray Energy and the millions of individuals and businesses who are dependent upon the electric power generated by the ongoing production of coal from this existing active coal mine and our future mining.

Thank you.

Sincerely,

MURRAY ENERGY CORPORATION



Robert E. Murray
Chairman, President & Chief Executive Officer

REM:lh

cc: The Honorable Jon A. Husted,
Speaker
Ohio House of Representatives



August 18, 2008

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

RE: Docket No. CP07-208-000
Rockies Express Pipeline LLC, REX-East Project,
**Response to Hoosier Hills' August 7th Letter re Rockies Express' Request for
Notice to Proceed for Spread F**

Dear Ms. Bose:

On August 1, 2008, Rockies Express Pipeline LLC ("Rockies Express") filed with the Federal Energy Regulatory Commission ("FERC" or "Commission") a Request for Notice to Proceed for Spread F in the above reference proceeding ("August 1 Request"). On August 7, 2008, the Hoosier Hills Regional Water District ("Hoosier Hills") sent a letter to the Commission, as well as to the Director of the Office of Energy Projects, asking the Commission to withhold authorization to proceed for various reasons. Rockies Express is filing the following response in order to clarify factually incorrect statements made by Hoosier Hills, and to urge the Commission to issue a timely Notice to Proceed on Spread F in accordance with Rockies Express' request of August 1.

On May 30, 2008, FERC issued Rockies Express a certificate of public convenience and necessity to construct and operate the REX-East project ("May 30 Order" or "Order").¹ The May 30 Order authorizes Rockies Express to construct and operate the REX-East project subject to identified environmental conditions contained in the Appendix to the Order. Condition Nos. 4 & 5 to the Order specifically require Rockies Express to receive written authorization to commence construction prior to actually commencing construction.

Hoosier Hills generally states that "Rex could or would commence construction upon receiving authority to proceed, regardless of"² the specific statement that it would not commence construction in areas of Spread F where surveys or agency clearances are pending. This statement has no basis in fact. Pursuant to the conditions of the Order granting the certificate, Rockies Express must expressly receive written authorization prior to actually commencing construction. As Rockies Express specifically stated in its

¹ Rockies Express Pipeline LLC, 123 FERC ¶ 61,234 (2008)

² Hoosier Hills' Letter at p. 2.

request, and has stated in all of its other requests for notice to proceed, it has no intention to, and will not, begin any construction activities in any areas where surveys or agency clearances are pending. In fact, Rockies Express' August 1 Request specifically listed the mileposts that are within Hoosier Hills Regional Water District's wellhead protection area ("WPA") as an exclusion zone within Spread F.³ Thus, Rockies Express has not yet sought permission to construct any facilities in the area with which Hoosier Hills Regional Water District is concerned. Hoosier Hills' baseless comment notwithstanding, Rockies Express will not begin any construction activities in any areas on Spread F, including within the Hoosier Hills Regional Water District's WPA, prior to specifically receiving written authorization to do so from the Commission. If granted approval, Rockies Express intends to begin construction activities only in those areas where all conditions have been met. Rockies Express will work around the identified exclusion zones, including the Hoosier Hills Regional Water District's WPA, until approval is received.

The letter filed by Hoosier Hills raises various concerns regarding certain certificate conditions, and claims that Rockies Express has not fulfilled those conditions. Hoosier Hills claims, for instance, that Rockies Express has not filed, and has not received approval for, the hydrostatic test plan, site-specific specialized spill plan, water quality testing plan for Hoosier Hills' existing wells, and site-specific crossing plans. The Commission's practice has not been to approve these types of documents specifically and individually. Rockies Express filed these documents as attachments to its request for Notice to Proceed on August 1, 2008. In reviewing Rockies Express' request, the Commission's practice has been to review these documents as well.⁴ When the Commission grants approval of the request for Notice to Proceed, such approval necessarily includes the documentation provided in support of the request. Thus, a grant of Rockies Express' request will fulfill the condition that Rockies Express receive approval for these documents prior to commencing construction.

With respect to the water quality testing plan for Hoosier Hills' existing wells, Hoosier Hills states that the plan submitted to FERC is in draft form, and should not be considered a final plan. This statement is inaccurate. After an unsuccessful attempt to arrange a meeting with Hoosier Hills in May, Rockies Express sent a draft copy of the plan to Hoosier Hills on June 3, 2008 and asked Hoosier Hills to provide comments. Rockies Express recently received Hoosier Hills' comments with respect to the water quality testing plan. Notwithstanding that Hoosier Hills may not agree with some specifics of the plan, Rockies Express has complied with the certificate condition. As previously stated, the Hoosier Hills Regional Water District is within one of the explicitly stated exclusion zones in Rockies Express' August 1 Request. Thus, Rockies Express will not begin construction in this area until all of the required clearances are completed, and Rockies Express has received authorization to commence construction.

³ See August 1 Request at 5, Table 2.1-4 (including MP 392.2 to 394.3 as part of the exclusion zone in Franklin County).

⁴ If the Commission finds that any of these documents do not satisfy the Commission's requirements, the Commission may require that Rockies Express provide additional information, as it has done in the past.

Condition No. 57 requires Rockies Express to perform water quality testing of the Whitewater River prior to, during, and for two years post construction. Hoosier Hills states that since no water quality testing has occurred in the Whitewater River, if construction activity begins in that area, Rockies Express will be in violation of this condition. As stated above, Rockies Express does not intend to begin construction on any areas where there are outstanding surveys and agency clearances. This includes the HDD crossing of the Whitewater River, which is within the exclusion zone identified for Franklin County. It is a fact that Rockies Express has not yet conducted water quality testing in the Whitewater River. Rockies Express intends to conduct these tests closer to the time when Rockies Express is ready to begin construction activities in this area to insure the most accurate testing conditions. The results of these tests will be provided to the appropriate agencies for approval prior to the start of construction.

Hoosier Hills claims that Rockies Express has not consulted with the Franklin County Drainage Board and the Whitewater River Advisory Board with respect to the pipeline project in accordance with Condition No. 59 of the May 30 Order. This statement is inaccurate. Pursuant to Condition No. 59, Rockies Express is required to consult with applicable local and state agencies regarding construction in the areas with WPAs or other groundwater management areas crossed by the pipeline, and file documentation of these consultations with the Secretary. As described below, neither the Franklin County Drainage Board nor the Whitewater River Advisory Board are "applicable" local and state agencies. Rockies Express has been in constant communication with the appropriate agencies in Franklin County since late 2007. Pursuant to the information provided by Franklin County during these consultations, Rockies Express was not required to consult with the Franklin County Drainage Board or the Whitewater River Advisory Board.

Rockies Express does not believe that the Franklin County Drainage Board ("Drainage Board") is an "applicable" agency requiring consultation under Condition No. 59. It is Rockies Express' understanding that the Drainage Board is a body of limited jurisdiction charged by state law with oversight of regulated drains within Franklin County. The Drainage Board's jurisdiction is invoked only when a regulated drain is being crossed by a project. Based on its consultations with the Franklin County Planning Commission's Executive Director, Rockies Express' project will not cross or otherwise affect any of the regulated drains that the Drainage Board regulates. Rockies Express also consulted with the Franklin County Commissioners regarding this project,⁵ and the same conclusion was reached. Thus, the Drainage Board is not an "applicable" agency, and Rockies Express was not required to consult with that particular agency.

As for the Whitewater River Advisory Board ("Advisory Board"), again, Rockies Express does not believe the Advisory Board to be an "applicable" local or state agency. Rockies Express understands that the Advisory Board is a sub-body of the Franklin County Area Plan Commission ("Plan Commission") and serves in an advisory capacity. The Advisory Board does not have any regulatory or permitting authority. Thus, Rockies

⁵ Rockies Express would like to note that the membership of the Drainage Board is coextensive with the Franklin County Commissioners.

Express was not required to consult with the Advisory Board pursuant to Condition No. 59. Rockies Express did, however, consult with the Plan Commission's Executive Director concerning its pipeline project on several occasions, and participated in a public hearing before the Plan Commission itself on March 19, 2008. Further, on July 29, 2008, Rockies Express responded to questions concerning the pipeline project submitted to it on behalf of the Plan Commission.

One of the issues raised by Hoosier Hills is the fact that while Rockies Express is required to notify Hoosier Hills at least 48 hours prior to the start of construction between MPs 393 and 394, Hoosier Hills has not received any notification of an intent by Rockies Express to begin construction. Rockies Express does not intend to begin construction between MPs 393 and 394 within the next 48 hours; thus, it has not provided such notification to Hoosier Hills. When Rockies Express is ready to begin construction in that area, Rockies Express fully intends to provide Hoosier Hills with at least a 48-hour notice.

Hoosier Hills raises certain issues with respect to Rockies Express' Flood Control Permit for the Whitewater River. As outlined by Hoosier Hills in its letter, Rockies Express filed for the permit on September 26, 2007 with the Indiana Department of Natural Resources ("DNR"). DNR issued the flood control permit on January 23, 2008, and later amended the permit on April 21, 2008. Hoosier Hills, the Drainage Board, and others filed petitions requesting administrative review of the permit's issuance. Rockies Express has moved for dismissal of those petitions. This proceeding is still outstanding; and the presiding Administrative Law Judge is expected to make a decision on Rockies Express' motion to dismiss soon after briefing is completed on August 18, 2008.

Another issue raised by Hoosier Hills is that the documents relevant to the Whitewater River crossings have been withheld from public view. The documents referenced by Hoosier Hills contain sensitive cultural information. Pursuant to the Commission's regulations, documents containing cultural information must be filed as privileged and confidential. The decision to classify them as such, and, therefore, withhold them from public view, is not a voluntary choice of Rockies Express. Hoosier Hills has legitimate legal avenues to obtain the documents in question. Hoosier Hills can request the documents via a Freedom of Information Act request filed either with FERC or the local State Historic Preservation Office, both of which have copies of the requested documents.

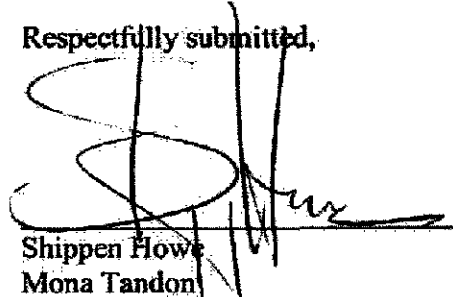
Finally, Hoosier Hills raised a concern about the lack of service of Rockies Express' request for Notice to Proceed with Spread F. Due to an administrative error, service of Rockies Express' request was not effectuated. Rockies Express regrets any inconvenience this has caused, and assures all of the parties and the Commission that the error has been corrected.

As set forth in its August 1 Request, Rockies Express requests written authorization to commence construction on Spread F of the REX-East project, subject to the conditions set forth in the environmental conditions. Rockies Express reiterates

that the August 1 Request specifically excluded the Hoosier Hills Regional Water District's WPA from its request to proceed with construction in Spread F. Thus, Rockies Express' August 1 Request does not apply to any of the areas of concern identified by Hoosier Hills. Rockies Express respectfully requests authorization to begin construction of Spread F as soon as possible, with the condition that no construction will occur in the identified exclusion areas (i.e., in those areas where surveys or agency clearances are pending).

Thank you for your time and consideration of these matters. Please direct any questions to Ryan Childs at (307) 760-5635.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Shippen Howe', is written over a horizontal line.

Shippen Howe
Mona Tandon
Van Ness Feldman, P.C.
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Washington, DC 20007
202-298-1800

Attorney for
Rockies Express Pipeline LLC

Attachments

cc: Laura Turner, FERC
Ellen Saint Onge, FERC
All Parties

Document Content(s)

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