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FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

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OFFICE OF ENERGY PROJECTS

In Reply Refer To:

PUCO

OEP/DG2E/Gas 2

Rockies Express Pipeline, LLC

Docket No. CP07-208-000

August 21, 2008

Don L. Klima

Advisory Council on Historic Preservation

1100 Pennsylvania Avenue, NW

Suite 803

Washington, DC 20004

**Re: Filing of Memoranda of Agreement**

Dear Mr. Klima:

In accordance with the Advisory Council on Historic Preservation's revised regulations (36 CFR 800.6(b)(1)(iv)) we are filing copies of four Memoranda of Agreement (MOA) related to historic properties for the Rockies Express East Project (REX East or the Project) in the above-referenced docket (Enclosures 1-4). In compliance with 36 CFR 800.6(a)(1), we previously notified your office of our "adverse effect finding" for this historic property on June 16, 2008. Execution of these MOA allows for the resolution of adverse effects at the National Register of Historic Places (NRHP) eligible archaeological sites.

In Missouri, nine sites would be adversely affected by the Project (23PI1365, 23PI294, 23PI1381, 23PI1370, 23PI1367, 23PI1362, 23PI1372, 23PI1344, and 23PI1337). A treatment plan to mitigate the adverse effects for two of these sites was developed and is included as Enclosure 5. A supplemental treatment plan will be filed for the remaining seven sites, and any additional NRHP-eligible sites that might be affected.

In Illinois, thirteen sites have been identified to date, that could be adversely affected by the Project (11E151, 11PK1245, 11PK1599, 11PK1713, 11PK1718, 11PK1745, 11PK1759, 11PK1771, 11ST539, 11ST540, 11ST541, 11ST544, and 11ST547). A treatment plan to mitigate the adverse effects for six of these sites was developed and is included as Enclosure 6. Supplemental treatment plans will be filed for the remaining seven sites, and any additional NRHP-eligible sites that might be affected.

In Indiana, six archaeological sites (12DE772, 12FR310, 12FR336, 12P652, 12SH450, and 12VE586) would be adversely affected by the Project. A treatment plan

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has been developed for these sites, and has been included as Enclosure 7. Supplemental treatment plans would be developed for any additional NRHP-eligible sites that cannot be avoided.

In Ohio, 16 archaeological sites would be adversely affected by the Project (33CN428, 33CN430, 33CN433, 33FA1740, 33MO77, 33PE174, 33PE175, 33PE351, 33PE362, 33PE794, 33PE807, 33PE808, 33PE838, 33PE839, 33PI179, and 33WA797). A treatment plan to mitigate the adverse effects for nine of these sites has been developed and has been included as Enclosure 8. Supplemental treatment plans would be developed for the remaining seven sites, and any additional NRHP-eligible sites that cannot be avoided.

The treatment plans were provided to the Federal Energy Regulatory Commission and the Missouri, Illinois, Indiana, and Ohio State Historic Preservation Offices. All parties concurred that the plans are adequate.

Pursuant to 36 CFR 800.11(f), there are no substantive revisions to the information already provided to your office in our notice of adverse effect. An evaluation of measures to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public were provided in that notice.

If you have any questions, please call Ellen Saint Onge, staff archaeologist, at (202) 502-6726.

Sincerely,

Alisa M. Lykens, Chief  
Gas Branch 2

Enclosures (8)

cc: Public File, Docket No. CP07-208-000 (w/ enclosures 1-4)

Alice Weekley (w/Enclosures 1-4)  
Project Management, Vice President  
Rockies Express Pipeline, LLC  
500 Dallas Street, Suite 1000  
Houston, TX 77002

Mark Miles, Director and Deputy SHPO (w/Enclosures 1-4)  
Attn: Judith Deel

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State Historic Preservation Office  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102

Anne Haaker, Deputy SHPO (w/Enclosures 1-4)  
Attn: David Halpin  
Illinois Historic Preservation Agency  
1 Old State Capitol Plaza  
Springfield, Illinois 62701-1512

Jim Glass, Deputy SHPO (w/Enclosures 1-4)  
Attn: Cathy L. Draeger  
Division of Historic Preservation & Archaeology  
402 West Washington Street, W274  
Indianapolis, IN 46204

Mark Epstein,  
Attn: David Snyder (w/Enclosures 1-4)  
Ohio Historic Preservation Office  
567 E. Hudson Street  
Columbus, OH 43211-1030

John Forman (w/Enclosures 1-4)  
Hunt-Forman Farm  
2945 North State Route 741  
Franklin, Ohio 45005

Ryan H. Childs (w/Enclosures 1-4)  
Cimarron Environmental Consulting, Inc.  
Project Environmental Manager (Contract) Contractor for Rockies Express  
Pipeline LLC  
500 Dallas St., Suite 1000  
Houston, TX 77002

Kari Krause (w/ Enclosures 1-4)  
Natural Resource Group  
1000 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

Enclosure 1

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

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 Missouri 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 archaeological sites 23PI294, 23PI1337, 23PI1344, 23PI1365, 23PI1372, and 23PI1381, 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 notified 31 Indian tribes that may attach religious or cultural importance to properties in the project area and received the following responses: 12 tribes responded with an interest in consultation regarding the discovery of human remains (Kickapoo Tribe of Oklahoma, Sac & Fox Tribe of the Mississippi in Iowa, Sac & Fox Nation of Missouri in Kansas and Nebraska, Sac & Fox Nation of Oklahoma, Peoria Tribe of Oklahoma, Prairie Band of Potawatomi Indians, Pokagon Band of Potawatomi Indians of Michigan, Citizen Potawatomi Nation, Delaware Tribe of Western Oklahoma, Miami Tribe of Oklahoma, Absentee-Shawnee Tribe of Oklahoma, and Wyandotte Nation); and three tribes requested to be consulting parties (Wea Indian Tribe, Iowa Tribe of Kansas and Nebraska, and the Osage Nation); and

Whereas, none of the above listed tribes have raised objections to the work proposed;

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

### **Stipulations**

- A. Rockies Express shall complete Phase I surveys, including any additional re-routes, extra work spaces, access roads and other areas as needed.
- B. Rockies Express shall complete all Phase II evaluations on properties that may be identified during any additional Phase I survey, as necessary.
- C. If, after consultation, SHPO, the FERC, and Rockies Express agree that avoidance is not feasible, Rockies Express shall complete Phase III mitigation in accordance with a Data Recovery Plan submitted to the Missouri SHPO, the FERC, the Osage Nation Historic Preservation Officer (ONHPO), and other consulting Native American tribes. The data recovery plan shall be submitted by Rockies Express for thirty (30) days review and comment.
- D. Rockies Express shall ensure that a data recovery plan that addresses substantive research questions is developed for sites 23PI1337, 23PI1344, 23PI1372, and 23PI1381 and any additional sites identified during subsequent survey. The data recovery plan would be developed in consultation with the Missouri SHPO, the FERC, the ONHPO, and other consulting Native American tribes. The plan shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48FR 44734-37) and take into account the Council's publication, Treatment of Archaeological Properties. It 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;
  - 4. proposed methods of disseminating results of the work in the interest of the public; and
  - 5. a proposed schedule for the submission of reports to the SHPO and consulting Native American tribes.
- E. Rockies Express shall ensure that the data recovery plan for sites 23PI294 and

23PI1365 and any subsequent 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 44738k-9).

- F. Curation of records, artifacts, and other items resulting from identification, evaluation, and data recovery efforts shall meet the level of 36CFR79.

### **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 will be notified. If the burial is not a crime scene, then the site will be treated in accordance with the provisions of the Missouri Revised Statute 194.400 through 194.410 (Unmarked Burial Sites). 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: \_\_\_\_\_

— Lauren O'Donnell  
Director, Division of Gas-Environment and Engineering, Office of Energy Projects

**Missouri State Historic Preservation Office**

By: \_\_\_\_\_ Date: \_\_\_\_\_

— Mark A. Miles  
Director and Deputy State Historic Preservation Officer

**Rockies Express Pipeline LLC**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Doug Walker  
President



Enclosure 2

**MEMORANDUM OF AGREEMENT  
AMONG  
THE FEDERAL ENERGY REGULATORY COMMISSION,  
ROCKIES EXPRESS PIPELINE LLC,  
AND  
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER  
CONCERNING THE ROCKIES EXPRESS EAST PIPELINE THROUGH  
PIKE, SCOTT, MORGAN, SANGAMON, CHRISTIAN, MACON,  
MOULTRIE, DOUGLAS, AND EDGAR COUNTIES IN ILLINOIS**

WHEREAS, the Federal Energy Regulatory Commission (FERC) has issued a certificate to Rockies Express Pipeline LLC (Rockies Express) for the construction of a natural gas pipeline through the counties of Pike, Scott, Morgan, Sangamon, Christian, Macon, Moultrie, Douglas, and Edgar in Illinois (the project); and

WHEREAS, the FERC has consulted with the Illinois State Historic Preservation Officer (SHPO) concerning effects of the project on historic properties in accordance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f) and its implementing regulations, 36 CFR part 800; 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, which include the FERC, the Illinois SHPO, and Rockies Express agree that recovery of significant information from the archaeological sites noted above shall be done in accordance with the Advisory Council on Historic Preservation's (Council) 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 and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations of this Memorandum of Agreement (MOA) in order to take into account the effect of the project on historic properties.

## STIPULATIONS

The FERC shall ensure that the following measures are carried out:

### I. TREATMENT OF ARCHAEOLOGICAL PROPERTIES

- A. Rockies Express shall complete the deep testing surveys at the Mississippi River and Bay Creek in Pike County, at Sand Creek and Finley Creek in Macon County, at Lake Fork, the Kaskaskia River, and the Embarras River in Douglas County, and at Crab Apple Creek and Salt Fork in Edgar County.
- B. Rockies Express shall complete additional Phase I reconnaissance surveys for re-routes, extra work spaces, and other areas as needed.
- C. Rockies Express shall complete all outstanding Phase II testing (determinations of eligibility) currently underway, and on properties that may be identified during the deep testing and additional Phase I reconnaissance surveys as necessary.
- D. Rockies Express shall consult with the SHPO and FERC regarding development of a plan for avoidance of historic properties and it shall be carried out in accordance with a plan submitted to the SHPO and approved by the SHPO in writing prior to its implementation.
- E. If, after consultation, SHPO, the FERC, and Rockies Express agree that avoidance is not feasible, Rockies Express shall complete Phase III mitigation in accordance with a Data Recovery Plan submitted to SHPO and the FERC. The data recovery plan shall be submitted by Rockies Express to the SHPO and to FERC for thirty (30) days review and comment.
- F. Rockies Express shall ensure that the data recovery plan addressing substantive research questions is developed in consultation with the Illinois SHPO and the FERC for the recovery of relevant archaeological data. The plan shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48FR 44734-37) and take into account the Council's publication, Treatment of Archaeological Properties. It 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;
  - 4. proposed methods of disseminating results of the work in the interest of the public; and
  - 5. a proposed schedule for the submission of reports to the SHPO and the FERC.

- G. Rockies Express shall ensure that the data recovery plan is implemented. The SHPO shall monitor this implementation.
- H. ROCKIES EXPRESS shall ensure that the data recovery plan is 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).
- I. In the event of the discovery of unanticipated prehistoric human burials, the SHPO, the FERC, and as appropriate the Indian tribes consulted will be notified. To fully satisfy coordination under 17 IAC 4170.300(d)(3) concerning the encounter of burials, the notification of the discovery will be made to the county coroner and to the Illinois Historic Preservation Agency. If the burial is not a crime scene as determined by the coroner, then it and any associated burial artifacts will be removed following procedures for recordation and reporting in accordance with the provisions of the Human Skeletal Remains Protection Act (20 ILCS 3440, 17 IAC 4170).
- J. ROCKIES EXPRESS shall ensure that adequate laboratory time and space are available for analysis of archaeological materials recovered from the excavations.
- K. ROCKIES EXPRESS shall ensure that an adequate program of site security from vandalism during data recovery is developed in consultation with the Illinois SHPO, and implemented.

## II. CURATION AND DISSEMINATION OF INFORMATION

- A. In consultation with the SHPO and the FERC, Rockies Express shall ensure that all materials and records resulting from archaeology survey and data recovery conducted for the project shall meet the requirements of 36 CFR Part 79. Materials and records shall be curated at the Illinois State Museum unless requested for return by the property owner. If the property owner so requests, these requests shall be individually considered by the SHPO and the FERC. No artifacts will be returned to the property owner until final reports are reviewed and approved in writing by the SHPO.
- B. Rockies Express shall ensure that all final archaeological reports resulting from actions pursuant to this agreement will be provided in a format acceptable to the. Rockies Express shall ensure that all such reports are

responsive to contemporary standards, and to the Department of the Interior's Format Standards for Final Reports of Data Recovery Programs (42FR 5377-79). Precise locational data may be provided only in a separate appendix if it appears that its release could jeopardize archaeological data.

### III. DISPUTE RESOLUTION

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

### IV. MODIFICATION OR TERMINATION

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

Execution of this MOA by the FERC and the Illinois SHPO and implementation of its terms shall constitute evidence that the FERC has taken into account the effects of the undertaking on historic properties as required by Section 106 of the National Historic Preservation Act of 1966, as amended.

### FEDERAL ENERGY REGULATORY COMMISSION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Lauren O'Donnell  
Director, Division of Gas Environment and Engineering

### ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Anne E. Haaker  
Deputy, State Historic Preservation Officer

### ROCKIES EXPRESS PIPELINE, LLC

By: \_\_\_\_\_ Date: \_\_\_\_\_

Enclosure 3

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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: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

### **Rockies Express Pipeline LLC**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
R. Douglas Walker  
President

Enclosure 4

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

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), on May 30, 2008, issued a Certificate of Public Convenience and Necessity under Section 7 of the Natural Gas Act, as amended, in Docket No. CP07-208-00, authorizing Rockies Express East LLC (Rockies Express) to construct and operate a natural gas pipeline and associated facilities for its Rockies Express East undertaking (project); and

Whereas, the FERC 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 FERC has determined that several historic properties that are listed or considered eligible for the National Register of Historic Places (REGISTER) may be adversely affected by the project; and

Whereas, the consulting parties agree that recovery and recordation of significant information about or from these historic properties 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;

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

## **STIPULATIONS**

### ***Phased Approach***

#### ***Area of Potential Effects***

**The Area of Potential Effects (APE) for this project is defined as required by 36 CFR 800.16(d). It is the geographic area within which there exists the potential for direct or indirect effects to the character or use of historic properties. Given the nature of the activities proposed as part of this project, the majority of the APE will take the form of a corridor generally oriented to the proposed pipeline, including access roads, additional temporary work spaces, and other ancillary facilities.**

**In general, the APE for architectural properties and other above-ground historic properties may include a more expansive area than that for archeological resources, and may include:**

**The setting of any buildings or structures within or adjacent to the right-of-way;**

**Areas that may experience visual or other effects through the introduction of new elements, such as effects that are intended to be temporary in nature.**

**The APE for archaeological resources is defined as the full extent of the construction zone along the corridor and within any ancillary facility where there will be ground disturbance.**

#### ***Phased Identification Effort for Historic Properties***

**FERC authorizes Rockies Express to provide documentation to the Ohio Historic Preservation Office (OHPO) and other consulting parties that describes the phased identification of historic properties. The methodology of the identification effort will follow the process described in following sections of this**



**stipulation. It is Rockies Express's intent to provide a level of information under this stipulation that is comparable to the documentation effort described in 36 CFR 800.4(b). After concurrence has been reached regarding the eligibility of properties, using the process described in this stipulation, Rockies Express will then consider effects, as described in Stipulations II and III herein.**

***Resource Identification and Resolution of Adverse Effects: Archaeology***

***Rockies Express shall complete Phase I surveys, including deep testing and any additional re-routes, extra work spaces, access roads and other areas as needed. This work shall be conducted in consultation with the OHPO and the FERC.***

***Rockies Express shall complete all outstanding Phase II evaluations on properties that may be identified during any additional Phase I survey as necessary. This work shall be conducted in consultation with the OHPO and the FERC.***

***For any sites determined eligible by the FERC through consultation with the OHPO and any additional consulting parties, Rockies Express shall develop a plan for avoidance, treatment, or mitigation of adverse effects in consultation with the OHPO, the FERC, and other consulting parties. Rockies Express shall submit the plan for review and approval by the OHPO and the FERC.***

***Rockies Express shall ensure that data recovery is carried out by or under the direct supervision of cultural resources professionals who meet, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (48FR 44738k-9).***

***Upon completion of the project, artifacts will be deeded to the Ohio Historical Society, or if requested, returned to the respective landowners. Curation of records, artifacts, and other items resulting from identification, evaluation, and data recovery efforts that are deeded to the Ohio Historical Society shall meet the level of 36 CFR 79. Artifacts returned to the landowner may receive additional documentation as determined through consultation with the OHPO and the FERC.***

***Resource Identification and Effects Consultation: Architectural Properties***

***COMPLETE SURVEYS: Architectural Properties.*** *Rockies Express shall complete identification level surveys, including the APEs for any additional re-routes, extra work spaces, access roads and other areas as needed. This work shall be conducted in consultation with the OHPO and the FERC.*

***COMPLETE IDENTIFICATION OF HISTORIC PROPERTIES: Architectural Properties.*** *For all architectural (non-archaeological) properties for which consultation has not been completed and for all surveys in portions of the APE not previously surveyed, Rockies Express shall complete identification level surveys of architectural properties to identify historic properties and provide documentation to OHPO for consultation that meets the following standards.*

**Rockies Express will provide detailed inventory information structured so that the eligibility of both individual properties and groups of related properties may be reasonably assessed, using the guidelines put forth by the REGISTER.**

**FERC, Rockies Express, and OHPO agree to seek concurrence regarding the eligibility of historic properties, but in the event of a disagreement and further consultation would not be productive, OHPO or Rockies Express may request that FERC shall make a formal Determination of Eligibility as described in 36 CFR 63.**

**A survey for the identification of historic architectural properties shall be conducted in a flexible manner in order to fully consider the significance of historic properties present within the APE, taking into account the likely presence of historic properties within the project area, the type of expected effects from project activities, and the project's potential to affect historic properties as defined in 36 CFR 800.5. This phased approach shall include:**

**Documentation of current condition and historic integrity for all REGISTER listed properties within the APE, with updated narrative and photos, as necessary.**

**Documentation of previously inventoried and locally designated properties within the APE by providing**

updated photographs and a narrative that describes any changes since the building was originally recorded. This information will be provided on a continuation sheet that may be appended to the original Ohio Historic Inventory Form (OHI).

OHIs shall be completed for architectural properties over 50 years of age and not previously documented within the APE.

*Any historic architectural properties within the APE that appear to possess a high level of historic integrity (as determined by the qualified cultural resource professionals) or any historic architectural properties that may be subject to potential effects resulting from the project shall be fully documented on the OHI.*

*After the initial field survey effort has been completed, OHPO may also request that OHI Forms be completed for any architectural properties that cannot be fully evaluated using the information provided.*

***EFFECTS CONSULTATION: Architectural Properties. Rockies Express, in consultation with the FERC and OHPO, will complete consultation concerning the potential for the undertaking to affect historic properties using the process described herein.***

Rockies Express shall seek to avoid adverse effects to historic properties, wherever possible, through the development of improved project corridor alignments or other alterations to the standard project design. In particular, Rockies Express will seek to avoid especially the demolition or destruction of historic properties that are REGISTER listed or eligible for the REGISTER, except when the implementation of the Project can be achieved by no other reasonable means as determined by the OHPO, the FERC, and Rockies Express.

To provide the greatest consideration of avoidance alternatives for historic properties, Rockies Express shall apply the Criteria of Adverse Effect to REGISTER listed or eligible properties. Rockies Express shall then consult with the OHPO, the FERC, and other consulting parties

**as appropriate, in order to evaluate potential avoidance alternatives for REGISTER listed or eligible properties identified as part of the phased identification effort.**

**Rockies Express will provide information to OHPO, the FERC, and all other consulting parties that describes potentially affected properties and possible avoidance alternatives. OHPO will provide comments within 30 days of the receipt of this information. OHPO may agree that through the use of an avoidance alternative that historic properties will not be affected, may request additional information before completing their evaluation of potential effects, may recommend that the proposed avoidance alternative be improved, or may recommend that Rockies Express proceed to resolve effects, as described in the Stipulations hereof.**

**Rockies Express may also propose alternatives that would minimize effects to historic properties and shall consult with consulting parties regarding the potential effects of such alternatives.**

**Any comments or views of consulting parties regarding Rockies Express's evaluation of eligibility and effect shall also be provided to OHPO.**

**FERC, Rockies Express, and OHPO shall consult until concurrence has been reached regarding the effect determination. If concurrence cannot reasonably be achieved, then FERC, Rockies Express, or OHPO may ask the Advisory Council on Historic Preservation for assistance, described in 36 CFR 800.6 [as referenced in 36 CFR 800.14].**

**After FERC, Rockies Express, and OHPO are in agreement that reasonable efforts have been made to avoid or minimize effects to historic properties, Rockies Express may propose mitigation for adverse effects to historic properties. This mitigation may include documentation, interpretation, or relocation of affected properties, or any additional form of mitigation agreed upon by FERC, Rockies Express, and OHPO after consultation regarding the resolution of these potential effects.**

**In the case of "no adverse effect", the conditions and procedures that ensure "no adverse effect" shall be documented between the OHPO, FERC, and the Rockies Express.**

**In the case of "adverse effect", a separate Treatment Plan may be developed in consultation between the FERC, the OHPO, Rockies Express, and any consulting parties that provides for the mitigation of adverse effects to individual resources or groups of related resources.**

**Cultural resource education and documentation methods and other mitigation measures may be employed as agreed upon by Rockies Express and the OHPO in these separate Treatment Plans.**

**Rockies Express will use best construction practices to reduce impacts associated with the general project construction in the vicinity of historic properties including efforts to minimize fugitive emissions, noise and vibration impacts, and short-term visual impacts. Specific mitigation measures for construction will be outlined during Effects Consultation.**

***Treatment Plans and Exclusion Zones.***

***Following the signing of this agreement Rockies Express will prepare and present to FERC and OHPO for review and approval, in one or more Treatment Plans, any plans developed under II.C. for avoidance or data recovery to resolve adverse effects to archaeological sites and plans developed under III.C. to avoid, reduce, minimize, or mitigate adverse effects to historic architectural properties.***

***The Treatment Plans will identify and describe exclusion zones required to protect historic properties prior to the completion of mitigation measures.***

***If historic properties are discovered or unanticipated effects on historic properties occur, the Rockies Express will notify the OHPO and make reasonable efforts to avoid, minimize or mitigate adverse effects to such***

*properties. The Rockies Express and OHPO shall be guided by steps established in 36 CFR 800.13.*

#### ***Timing for Start of Construction***

*Upon signing of this agreement and authorization by the FERC, construction may commence outside of those areas designated as exclusion zones where mitigation or data recovery would take place. Within the exclusion zones, construction may commence at such time as appropriate fieldwork is completed as specified in the first Treatment Plan, and any other succeeding Treatment Plan, and as authorized by the FERC. Fieldwork shall be considered complete following approval by the FERC and the OHPO of a management summary of the fieldwork portion of the investigations. The management summary shall serve as a planning milestone and does not substitute for a complete final report.*

### **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.*

#### ***Amendments***

*Modification, amendment, or termination of this agreement, as necessary, shall be accomplished by the signatory parties in the same manner as the original agreement. Any consulting party may recommend modifications or amendments.*

***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 signatory parties agree in writing to an extension.***

Execution of this Memorandum of Agreement (MOA) by the FERC, Rockies Express, and the OHPO, the subsequent filing of documentation of this MOA with the Council pursuant to 36 CFR Section 800.6(b)(1)(iv), and implementation of its terms, evidence that the FERC has taken into account the effects of this Undertaking on historic properties and afforded the Council an opportunity to comment.

## SIGNATORIES

Federal Energy Regulatory Commission

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Lauren O'Donnell  
Director, Division of Gas-Environment and Engineering, Office of Energy  
Projects

Ohio Historic Preservation Office

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Rockies Express Pipeline LLC

By: \_\_\_\_\_ Date: \_\_\_\_\_  
R. Douglas Walker  
President



Document Content(s)

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