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August 19, 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
Hoosier Hills' Reply to REX's Response To Request to Withhold Authorization to Proceed

Dear Commissioners and Director Robinson:

On behalf of its 37,000 ratepayers, Hoosier Hills finds it imperative to reply to REX's response to Hoosier Hills' Request to Withhold Authorization to Proceed. In fact, as demonstrated below, REX's filing makes even more clear the need for authorization to be withheld.

1. REX's "exclusion zone" assurances are empty when the exclusion is based on an issue unrelated to Hoosier Hills.

In an attempt to minimize somehow Hoosier Hills' Request to Withhold Authorization, REX points to Table 2.1-4 of its Request for Notice to Proceed with Spread F, which reflects, in pertinent part, the basis for the area being designated a "construction exclusion area".

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TABLE 2.1-4

Rockies Express Pipeline-East Project
Construction Exclusion Areas and Restricted Construction Travel Lane Areas – Spread F [1]

State	County	Entry MP	Exit MP	Discrete Start Point	Discrete Stop Point	Reason for the Exclusion Zone	Month Available for Construction
Exclusion Zone							
Indiana	Franklin	392.2	394.3	Southern boundary of tract IN-FR-105.001	Private drive on tract IN-FR-129.001	Cultural resources surveys and/or SHPO concurrence pending.	September - November

REX actually concedes that one condition operates to preclude it from commencing construction through the Whitewater River. That is the requirement to obtain "Cultural resources surveys and/or SHPO concurrence" on private property near the aquifer. It is REX's position, however, that once the artifacts issue is completed and REX obtains SHPO concurrence, it should be authorized to proceed with construction, and most likely REX does indeed intend to proceed with its HDD of the Whitewater River as soon as humanly possible once the SHPO hurdle is cleared. Not surprisingly, however, asserting that it has only the SHPO hurdle to clear requires REX to gloss over the fact that it has not complied with the Certificate Condition 57: the requirement to develop a water monitoring plan in consultation with Hoosier Hills.

2. REX's claims of compliance are simply untrue.

Hoosier Hills submits that Rockies Express is not entitled to authorization to proceed when it has not complied with the requirements outlined in the Certificate and its Conditions. Its request is premature given its failure and/or refusal to comply; for this Commission to grant REX's Request for Notice will serve only to give REX something it has yet to earn. Furthermore, REX has not shown a need, much less entitlement or good cause, for authorization, when: the review process of the state's water quality and flood control permits are outstanding; by REX's own admission it did not consult with Hoosier Hills as required by Condition 57; and construction activities will not occur in the exclusion zones.

Hoosier Hills is gratified to learn that REX contends that it "has not yet sought permission to construct any facilities in the area with which Hoosier Hills Regional Water District is concerned", the following facts notwithstanding:

- that REX's August 1 Request for Notice to Proceed is entitled "Request for Notice to Proceed – SPREAD F, (Including the Whitewater River. . . ."

- that at page 6 of its Request for Notice to Proceed With Spread F, Table 2.2-1 proposes a Construction Start Date of August 11-25 for its HDD through the Whitewater River aquifer:

TABLE 2.2-1

Rockies Express Pipeline-East Project
Location of Requested Horizontal Directional Drill Crossings

HDD / Waterbody Name (Milepost (MP))	Spread	Crossing Site Approx. Mileposts (Area Requested in NTP)	Drill Entry Point (MP)	Drill Exit Point (MP)	Crossing Site Length (feet)	Western Access Road Name	Eastern Access Road Name	Con-struction Start Date
Whitewater River (MP 393.1)	F	MP 392.6 to 394.0	393.0	393.5	2,461	Highland Center Road	U.S. Highway 52	August 11-25
Four Mile Creek (MP 421.4)	F	MP 421.5 to 422.3	421.5	421.9	1,887	Off of Warwick Road	Off of Mills Street and West Elkton Road	August 11-25
Seven Mile Creek (MP 422.5)	F	MP 422.1 to Access road at Norfolk Southern Railroad at MP 422.9	422.6	422.6	1,554	Off of Brooks Road	Off of Mills Street and West Elkton Road	August 11-25
Great Miami River (MP 430.8)	F	MPs 429.9 to 431.3	430.6	430.9	1,960	County Road 150	State Route 4	August 11-25

- that REX's assurances to the Commission do not acknowledge REX's deficiencies in complying with permitting requirements and Certificate Conditions relating to the Whitewater River, stating merely that it "will not commence construction in those areas of Spread F where requisite local, state or federal permits or approvals; rights of possession; or environmental (biological and cultural) surveys have yet to be obtained or conducted." [1]

- that REX noted in its supporting documentation to its Request that it has obtained its Flood Control Permit for the Whitewater River crossing construction on April 21, 2008; Attachment O_IN Flood Permits, page 25

- that REX did not also disclose that the Whitewater River crossing Construction Flood Control Permit is currently in administrative review; and

[1] 20080807-0089, Page 2 paragraph 1.

- that REX did not also disclose that its NPDES permit for the hydrostatic testing is also currently in administrative review;

First, it is important to note that in setting forth the above in its Request, REX did not acknowledge to the FERC that the administrative reviews of REX's permits from the DNR and IDEM are still outstanding – that is, until Hoosier Hills raised the issue. Such a lack of forthright disclosure calls into question the extent to which the FERC has otherwise been fully informed.

However, even assuming *arguendo* that REX is truly not seeking in this Request to perform any construction activities on the Whitewater River crossing, and that REX intends to respect the entirety of Indiana's administrative and judicial review process to the exhaustion of all appellate rights, such assumptions do not warrant this Commission granting REX's request as to the remainder of Spread F. Until the "exclusion zones" and the outstanding permits are settled, any surrounding construction continues to be unsettled, and is at risk of disturbing the land of others only to be abandoned later should it be determined that the pipeline needs to be re-routed.

Another untoward result of allowing REX to commence construction in Spread F before the entirety of the spread is settled: it undermines the integrity of the permitting process and can be leveraged to try to compel a decision which, under normal circumstances, would not have been made. The effect is creating a situation where the FERC -- or the state agencies reviewing the permits at issue -- will be pressured into giving REX what it wants solely because so much of the pipeline had already been put into place. Such strategic gamesmanship should not be enabled.

3. REX's unsubstantiated representation, at page 2 of its response, that it "complied with Condition 57" is stunningly without basis in law or fact.

REX's justification as articulated in its Response indicates that REX would have this Commission believe that it complied with Condition 57, the FERC requirement to *consult with Hoosier Hills,* because of acts (indeed, REX's failures to act) which REX admits occurred in May – before the Certificate and Conditions were even issued by this body. The truth behind REX's fiction has been brought to this Commission's attention previously, and can be found in the FERC record at Accession Number 20080513-5243, a copy of which is attached hereto for the Commission's convenience. To review:

On May 2, in a telephone conversation, REX counsel Phillip McKiernan indicated to undersigned counsel that certain REX representatives wanted to meet with Hoosier Hills to consider "some technical documents that the pending FEIS requires" of his client.[2] Counsel agreed on the date of May 12, and Hoosier Hills' representatives arranged their schedules to meet with REX. I requested of Mr. McKiernan that REX provide the technical documents in advance of the meeting to prepare for the meeting. REX neither agreed – nor refused, for that matter – to provide the documents. *No further discussions transpired. REX did not provide any documents, and the meeting date passed without so much as a word from REX.* Yet, REX would

[2] Not once was it represented to Hoosier Hills that the "technical documents" to be considered were a water monitoring plan, much less a plan that needed to be developed in consultation with Hoosier Hills.

have this Commission believe that, under those facts, it should somehow be credited with complying with a subsequent Condition by its inaction and exclusion of Hoosier Hills.

REX also attempts to feign compliance with Condition 57 in the second paragraph of page 2 of its Response. First, because REX, as it finally admitted, failed to serve its Request for Notice to Proceed on any of the parties until August 8, 2008, Hoosier Hills' Request to Withhold Authorization was based on improperly limited information. Hoosier Hills has now seen the Water Monitoring Plan filed with this Commission on August 1st: *it is REX's draft water monitoring plan*, only bearing a different designation. The word "draft" was replaced with the word "final", and one chart was relocated. It even contains the same misrepresentation to this Commission: that "this water monitoring plan was developed in consultation with Hoosier Hills Regional Water District".[3] ***This Water Monitoring Plan was not developed in consultation with Hoosier Hills Regional Water District; it violates Condition 57.*** Despite the fact that REX has had our concerns for a month, and despite Hoosier Hills' repeated requests to arrange a consultation, REX filed with this Commission on August 1, 2008 a document it had unilaterally created in May, and simply re-titled "final" on June 9, five (5) days after first sending the plan to Hoosier Hills.

As evidenced by its own documentation, REX unilaterally determined that Hoosier Hills should be afforded only 5 days to distribute REX's draft plan to the members of the Board, have the plan analyzed by experts, convene the Board, compile its concerns, formulate reasonable alternatives, and convey those concerns back to REX, all without REX agreeing to a single meeting to effectuate the true consultation contemplated by the FERC and sought by Hoosier Hills from the start.

When Hoosier Hills received the draft monitoring plan on June 4, 2008, counsel wrote to REX counsel McKiernan, and explained that five days is simply unreasonable in which to analyze the plan and effectuate a proper consultation. REX counsel did not indicate in response that an extension was unacceptable; indeed, REX counsel did not reply at all. When Hoosier Hills notified REX on June 26, 2008, that its response to REX's draft monitoring plan was forthcoming[4], REX counsel did not indicate that it had already foreclosed any consultation from Hoosier Hills; indeed, REX counsel did not reply at all. In fact, when Hoosier Hills provided REX with its July 21, 2008, outline of deficiencies in the draft water monitoring plan,[5] REX still did not indicate that it had no intention of considering input from Hoosier Hills; indeed, REX counsel did not reply at all. When REX filed its own water monitoring plan on August 1, 2008, it did not serve Hoosier Hills. No facts here support an inference, much less a finding, that REX complied with Condition 57.

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[3] REX makes the same misrepresentation in another submission to the FERC: in its Spill Prevention, Containment, and Countermeasures Plan, FERC filing Accession Number 20080801-4012(19627349), Attachment M. This misrepresentation is even more glaring, however; not one single time did REX ever even raise the possibility with Hoosier Hills that such a consultation was available.

[4] 2008-0626-5022

[5] 20080721-5119

4. REX mischaracterizes the true requirements of Condition 57 in its Request for Notice to Proceed.

In Attachment B to its Request for Notice to Proceed, REX outlines the Certificate Conditions pertinent to its Request. Its characterization of Condition 57 is a convenient truncation of the true language of the condition:

> 57 File water quality testing plan for Hoosier Hills Regional Water District's existing wells; provide copies to Hoosier Hills.

Of course, as Hoosier Hills has stated repeatedly, in addition to the simple requirement of 'filing a finalized plan with the Secretary', this Commission ordered, as a condition of its approval, that REX "**shall** develop a water quality testing plan for Hoosier Hills' existing wells **in consultation with Hoosier Hills.**" REX's persistent flouting of this Commission's requirements warrants not an authorization to proceed as requested by REX; quite the contrary. REX has earned an order staying construction pending resolution of the outstanding permitting matters and REX's outright adoption of Hoosier Hill's recommendations as outlined in its July 21, 2008, correspondence to REX. Such an order would bring about true compliance with Condition 57.

Please withhold your authorization to proceed with construction on Spread F. REX did not comply with a critical condition of the Certificate, yet it intends to proceed as if it had. Withholding your authorization pending fulfillment of the condition is the only way to ensure REX's compliance.

For all of these reasons, Hoosier Hills respectfully requests that you impress upon REX the gravity of its noncompliance with the conditions set forth in the Certificate of Public Convenience and Necessity. Enforce the letter and spirit of the Conditions by withholding your granting of authority to proceed until such time as all conditions have been satisfied, including but not limited to such time as REX adopts those recommendations made by Hoosier Hills in its July 21, 2008 response to REX's draft water monitoring plan, and gives Hoosier Hills the opportunity to modify REX's SPCC Plan.

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

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May 13, 2008

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: Rockies Express Pipeline, L.L.C.
Proposed REX EAST Project
Docket No. CP07-208-000

Dear Ms. Bose and Commissioners:

FERC Staff, at 4-27 of its FEIS, recommended that Rockies Express Pipeline, LLC ("REX") consult with Hoosier Hills Regional Water District ("Hoosier Hills") as REX seeks to route its proposed pipeline through the Whitewater River and its underlying aquifer.

On Friday afternoon, May 2, 2008, I spoke with REX attorney Phillip B. McKiernan. He indicated that certain REX representatives wanted to meet with Hoosier Hills to consider some technical documents that the pending FEIS requires of his client.

We arrived at a tentative available date of May 12. I requested that the above-referenced technical documents be provided to my client in advance of the meeting, stressing that it would be very difficult for my client to participate in a true consultation as intended by the FEIS recommendation without an opportunity for prior review and consideration of their documents. No commitment to produce the documents was forthcoming from Mr. McKiernan.

On May 5, 2008 I confirmed my client's May 12 availability to Mr. McKiernan, reiterating my client's willingness to participate in a consultation as long as the REX representatives would be able to produce the technical documents in advance of the meeting in order to effectuate the FEIS recommendation of a

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true consultation. To that end, I asked Mr. McKiernan to inquire as to his client's ability to provide the documents in advance of the meeting, advising that should they be unable to accomplish the documents' production, we would need to seek another meeting date to make the appropriate arrangements. Again no commitment was offered.

The morning of Monday, May 12, 2008, passed with neither word from Mr. McKiernan nor delivery of the requested documents. Consequently, I advised Mr. McKiernan that since my clients had not received the technical documents as previously indicated, no meeting would occur.

Copies of my May 5 and May 12, 2008 correspondence are attached for your review.

To be clear, neither the Hoosier Hills Board of Directors nor I wish to skirt the letter or spirit of the FERC recommendation at issue. Hoosier Hills Regional Water District remains firmly committed to the preservation of the high quality groundwater resources that are found in the Whitewater River and its underlying aquifer. Our multiple requests for the documents REX purportedly wanted to share were reasonable and intended to cooperate with REX. We were left to wonder why REX would initiate the contact in the first place if it had no intention of accomplishing any real consultation. Certainly no true purpose is served by arranging what would amount to little more than a inconsequential meeting: not the recommended consultation or the sharing of information, but at best an opportunity merely to appear to satisfy a requirement.

Thank you for your time and consideration. Should you have any questions or require additional information, please do not hesitate to contact me at the above address or phone number. With kind regards, I remain

Cordially,
CLINE, KING & KING, P.C.

Peter Campbell King

PCK/ckb
Enclosures
cc: Philip B. McKiernan, Attorney for Rockies Express Pipeline, LLC
Greg Dole, President, Hoosier Hills Regional Water District
Scott Stirn, General Manager, Hoosier Hills Regional Water District

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May 5, 2008

VIA FACSIMILE

Phillip B. McKiernan, Attorney
Hackman, Hulett & Cracraft, LLP
111 Monument Circle, Suite 3500
Indianapolis, IN 46204

Dear Mr. McKiernan:

This confirms our telephone conference of Friday afternoon, May 2, 2008, wherein you indicated that personnel from your client would like to meet with representatives of Hoosier Hills Regional Water District on either May 8 or May 9 to consider some technical documents that the pending final EIS requires of your client. As I indicated, to you, I am unavailable on either May 8 or 9.

We also discussed the possibility of a meeting on May 12. I have contacted my client, and we can be available on May 12 at 4:30 p.m. at the offices of Hoosiers Hills Regional Water District, 7215 E St Rd 350, Milan, IN 47031, to review the technical documents as long **as those technical documents are made available to my client on May 8, 2008.** As I indicated, it would be very difficult for my client to have a meaningful meeting on May 12 if we are merely provided the documents that day and asked to comment upon the documents. Therefore, please let me know your client's capability as it relates to providing the documents to us. If the documents cannot be provided prior to the meeting as outlined, we will need to seek another meeting date.

I thank you for your cooperation.

With kind regards, I remain

Cordially,
CLINE, KING AND KING, P.C.

Peter Campbell King

PCK/ckb
cc: Greg Dole, President, Hoosier Hills Regional Water District
Scott

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May 12, 2008

VIA FACSIMILE

Phillip B. McKiernan, Attorney
Hackman, Hulett & Cracraft, LLP
111 Monument Circle, Suite 3500
Indianapolis, IN 46204
Facsimile: 317-686-3288

Dear Mr. McKiernan:

Since my clients have not received the technical documents as requested in our telephone conference of May 2 and confirmed in my May 5, 2008, fax, there will be no meeting today, May 12, 2008, at 4:30 p.m. at the offices of Hoosiers Hills Regional Water District.

With kind regards, I remain

Cordially,
CLINE, KING AND KING, P.C.

Peter Campbell King

PCK/ckb
cc: Greg Dole, President, Hoosier Hills Regional Water District
Scott Stirn, General Manager, Hoosier Hills Regional Water District

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