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06-1142-GA-BFN

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PUCO

**ANSWER OF ROCKIES EXPRESS PIPELINE LLC
TO HOOSIER HILLS REGIONAL WATER DISTRICT'S MOTION FOR
RECONSIDERATION AND REQUEST FOR TECHNICAL CONFERENCE**

The September 5 Motion does not raise any new issues that have not already been raised by Hoosier Hills. These issues were directly addressed by the Commission in the Final Environmental Impact Statement (“FEIS”) and the Commission’s order granting a certificate of public convenience and necessity to Rockies Express.¹ The May 30 Order requires Rockies Express to apply a Spill Prevention, Control, and Countermeasure Plan (“SPCC Plan”) to the Hoosier Hills Wellhead Protection Area (“WPA”). In addition, Environmental Condition Nos. 56 and 57 of the May 30 Order require further mitigation

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measures specific to Hoosier Hills' WPA. If Hoosier Hills was dissatisfied with these protections and mitigation measures, the appropriate procedure for relitigating the issues would have been a request for rehearing of the May 30 Order. The Commission should not permit Hoosier Hills to relitigate these issues endlessly.

Rockies Express will comply with the conditions of the Commission's May 30 Order, which requires Rockies Express to satisfy, and exceed, industry standards with respect to Hoosier Hills' WPA. The September 5 Motion does not raise any new facts not already addressed by the FEIS and May 30 Order, nor does it raise any issues that require a technical conference. Accordingly, Rockies Express respectfully requests that the Commission deny Hoosier Hills' request for reconsideration and deny the request for a technical conference.

I. BACKGROUND

On April 30, 2007, Rockies Express filed an application, pursuant to Section 7(c) of the Natural Gas Act ("NGA") and Part 157 of the Commission's regulations, requesting a Certificate of Public Convenience and Necessity authorizing the construction and operation of its Rockies Express Pipeline-East ("REX-East") Project. In April 2008, the Commission issued the Final Environmental Impact Statement for the REX-East Project. On May 30, 2008, the Commission issued the requested certificate to Rockies Express.²

Between April 2007 and the Commission's May 30 Order, Hoosier Hills filed comments on seven different occasions, raising various issues with respect to the REX-

² *Rockies Express Pipeline LLC*, 123 FERC ¶ 61,234 (2008).

East Project.³ The substantive issues raised in these filings were similar, if not identical, to the issues raised in the September 5 Motion. The Commission addressed Hoosier Hills' concerns in both the FEIS and the May 30 Order.

The FEIS contains an extensive discussion of the potential effects of the REX-East Project on WPAs in general, and the effects of the REX-East Project specifically on Hoosier Hills' WPA.⁴ The FEIS recognized that construction through WPAs, including Hoosier Hills' WPA, must protect against the potential for impaired water quality, decreased yield, or disruptions of service. The FEIS found that with such protections and mitigation measures in place, the identified impacts of the REX-East Project on WPAs can be avoided or minimized.⁵

In its discussions of WPAs, the May 30 Order focused specifically on the "many concerns" raised by Hoosier Hills. After discussing the issues raised by Hoosier Hills, the May 30 Order adopted the recommendations of the FEIS and requires Rockies Express to conduct water quality testing (Environmental Condition No. 57), to implement a SPCC Plan that will restrict refueling or other liquid transfers within a specified distance from wetlands or water supply wells (Environmental Condition No. 55), and to develop a site specific spill plan that will further reduce the likelihood of spills or leaks

³ Comments of Hoosier Hills Regional Water District, filed on January 14, 2008; Comments of Hoosier Hills Regional Water District, filed on January 14, 2008; Comment of Hoosier Hills Regional Water District in Reply to Rockies Express' Response to FERC's February 8 Environmental Information Request and to Newly-Disclosed Developments, filed on March 3, 2008; Response of Hoosier Hills Regional Water District to the Final Environmental Impact Statement and Request for Review, filed on April 28, 2008; Comment of Hoosier Hills Regional Water District to the Final Environmental Impact Statement's Failure to Identify a High Consequence Area and Request for Review, filed on May 13, 2008; Supplemental Information filed by Peter Campbell King on behalf of Hoosier Hills Regional Water District, filed on May 13, 2008; and Comments of Hoosier Hills Regional Water District on the Proposed REX East Project, filed on May 22, 2008. Since the Commission issued its May 30 Order, Hoosier Hills has filed comments in nine additional instances.

⁴ *Rockies Express Pipeline LLC*, Docket No. CP07-208-000, Final Environmental Impact Statement at 4 - 24 through 4 -29 (April 2008).

⁵ *Id.* at 4-26.

from construction-related equipment impacting the Hoosier Hills WPA (Environmental Condition No. 56). With these conditions, the May 30 Order concurred with the FEIS in concluding that any impacts on Hoosier Hills' WPA would be avoided or minimized.⁶

On August 1, 2008, Rockies Express filed a Request for Notice to Proceed with construction for Spread F. The August 1 request specifically listed the mileposts that are within Hoosier Hills' WPA as an exclusion zone within Spread F.⁷ Thus, Rockies Express did not at that time, and has yet to, seek permission to construct any facilities in the area with which Hoosier Hills is concerned. Nevertheless, on August 7, 2008, 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 Rockies Express' requested notice to proceed. Rockies Express responded to Hoosier Hills' August 7 letter, and the issues raised therein, on August 18, 2008. On August 19, 2008, Hoosier Hills filed a response to Rockies Express' August 18th response. Then, on September 5, 2008, Hoosier Hills filed what it claims to be "new information" with the Commission, and requested that the Commission order a technical conference.⁸

The Commission has already considered and addressed the issues raised by Hoosier Hills. As explained in greater detail below, Hoosier Hills' September 5 Motion does not provide any new information that would require the Commission to order a technical conference. Therefore, the Commission should deny the September 5 Motion.

⁶ May 30 Order at P 121.

⁷ 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).

⁸ Hoosier Hills Regional Water District's Motion for Reconsideration Based on New Information and Request for Technical Conference, filed on September 5, 2008. *See also* Update Regarding Hoosier Hills Regional Water District's New Wellhead Protection Area Approved by Indiana Department of Environmental Management, filed on September 5, 2008.

II. ARGUMENT

A. The September 5 Motion Does Not Provide Any New Information Or Raise Any Issues That Have Not Already Been Considered And Addressed By The Commission

The September 5 Motion does not provide any new information that is material to the Commission's decision in this proceeding. The essence of Hoosier Hills' September 5 Motion is that its WPA has been expanded since Hoosier Hills initially filed its comments in January 2008. Hoosier Hills claims that "this change is important enough to revisit the issue...because it calls into question the basis for the FERC's allowing the proposed pipeline to be sited so close to Hoosier Hills' aquifer."⁹ Hoosier Hills, does not, however, offer a scintilla of support for its claim that the Commission's existing environmental conditions with respect to Hoosier Hills do not address an expanded WPA.

Even before the recent expansion of Hoosier Hills' WPA, the REX-East Project was proposed and approved for construction within the WPA. As described in Rockies Express' Water Monitoring Plan and its Spill Prevention, Containment, and Countermeasure Plan for the WPA, which were filed with the Commission on August 1, 2008, Rockies Express planned to construct the REX-East Project across a portion of the 5-year time-of-travel wellhead protection zone for the WPA. The expansion of the WPA does not change that fact – the REX-East Project will still cross a portion of the 5-year time-of-travel zone. In fact, a review of the map submitted by Hoosier Hills shows that the presence of the REX-East Project in the expanded WPA is not significantly greater than it was in the previous boundaries of the WPA.

⁹ September 5 Motion at p. 2.

The September 5 Motion does not raise any relevant issues that were not already raised and considered. For example, in its January 12 comments, Hoosier Hills discussed its strategic expansion plans, its Master Plan for future capacity, and its concerns regarding possible contamination of the aquifer. These same issues were raised again in Hoosier Hills' September 5 Motion. In fact, the only difference between Hoosier Hills' January 12 comments and the September 5 Motion are Hoosier Hills' new WPA maps and its assertion that the WPA has been expanded. Hoosier Hills did not, however, even attempt to explain what relevance the expansion has to the Commission's earlier decision to approve the pipeline's location subject to appropriate mitigation.

The Commission examined all of the issues and environmental concerns raised by the REX-Ease Project crossing Hoosier Hills' WPA, and addressed any potential effects in the May 30 Order. The Commission's analysis of the effects of the REX-East Project, and the required monitoring and mitigation conditions, remain valid even if the WPA has been expanded.¹⁰ Thus, contrary to Hoosier Hills' assertion, there is no "change in circumstances" that "warrants a fresh look at the impact that the pipeline and its construction activities will have" on the WPA.¹¹ The monitoring and mitigation measures required by the Commission will apply in the expanded WPA just as they did in the previous boundaries of the WPA; nothing in the September 5 Motion supports a different conclusion.

B. Hoosier Hill's Motion For Reconsideration Is An Abuse Of The Commission's Procedures And Should Be Denied

¹⁰ In accordance with the environmental conditions of the May 30 Order, Rockies Express will apply its approved SPCC plan and the Commission's specific Hoosier Hills WPA conditions to the WPA as approved by the Office of the Indiana Department of Environmental Management ("IDEM"). On September 5, Hoosier Hills submitted an update to its pleading, stating that the IDEM had verbally informed Hoosier Hills that IDEM had approved Hoosier Hills' Wellhead Protection Area, as submitted. Rockies Express will honor boundaries established by the state agency.

¹¹ September 5 Motion at p. 2.

Considering that the Commission has already addressed any issues raised by the REX-East Project with respect to Hoosier Hills' WPA, and the fact that Hoosier Hills did not raise any new issues in its latest pleading, the September 5 Motion can only be seen as an inappropriate and untimely attempt to seek rehearing of the Commission's May 30 Order. Hoosier Hills is attempting to relitigate issues that should have been raised in a request for rehearing of the Commission's May 30 Order. This is an abuse of the Commission's procedures, and, therefore, the September 5 Motion should be denied.

Pursuant to section 19 of the NGA, "any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter...may apply for a rehearing **within thirty days** after the issuance of such order."¹² Hoosier Hills had ample opportunity to request timely rehearing of the Commission's May 30 Order. Hoosier Hills, however, chose not to request rehearing and now, almost 4 months after the Commission's Order, it is attempting to relitigate the same issues, even though the Commission has already considered and addressed them.

Hoosier Hills should not be permitted to relitigate the same issues endlessly. Therefore, the Commission should deny the September 5 Motion.

C. A Technical Conference Is Not Necessary

As described in detail above, Hoosier Hills' September 5 Motion does not raise any material issues that have not already been addressed by the Commission. Any potential effects of the REX-East Project crossing Hoosier Hills' WPA will not be altered by its expansion – the issues remain the same and the Commission has addressed them. Thus, there is nothing new to consider. Hoosier Hills has provided no support for its

¹² 15 U.S.C. 717r(a) (emphasis added).

contention that the expansion of the WPA is a change in circumstances. The Commission should not grant Hoosier Hills' request for a technical conference based on an amorphous claim about an expanded watershed and unsupported allegations of changed circumstances.

III. CONCLUSION

As described above, all of the issues relevant to the Hoosier Hills' WPA were addressed in the FEIS and the May 30 Order. The September 5 Motion does not raise any new issues requiring reconsideration or a technical conference. Therefore, the Commission should deny the September 5 Motion.

Respectfully submitted,

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Dated: September 19, 2008
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington D.C., this 19th day of September, 2008.

/s/ Robert F. Christin
Robert F. Christin

Document Content(s)

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September 19, 2008

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

RE: Docket Nos. CP07-208-000
Rockies Express Pipeline LLC, REX-East Project
Cultural Information

Ms. Bose:

Rockies Express is hereby providing additional information concerning cultural information regarding a property on the REX East Project route.

The information submitted contains privileged and confidential data pursuant to the Commission's regulation. Rockies Express is providing complete copies of this filing directly to the FERC Project Manager. If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

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Attorney for
Rockies Express Pipeline LLC

Attachments

cc: Laura Turner, FERC
Ellen Saint Onge
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Document Content(s)

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