

123 FERC ¶ 61,234
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Rockies Express Pipeline LLC

Docket Nos. CP07-208-000
CP07-208-001

ORDER ISSUING CERTIFICATE

(Issued May 30, 2008)

1. On April 30, 2007, Rockies Express Pipeline LLC (Rockies Express) filed an application in Docket No. CP07-208-000, as amended in Docket No. CP07-208-001,¹ under section 7(c) of the Natural Gas Act (NGA)² for a certificate of public convenience and necessity authorizing the construction and operation of approximately 639 miles of pipeline facilities, including five compressor stations, from Audrain County, Missouri east to the Town of Clarington, in Monroe County, Ohio (the REX-East project). Rockies Express also proposes to construct and operate two compressor stations on its existing facilities – one in Carbon County, Wyoming and the other in Phelps County, Nebraska.

2. We will authorize Rockies Express' proposals, with appropriate conditions, as discussed below.

I. Background

3. Rockies Express is a Delaware limited liability company that is wholly owned by West2East Pipeline LLC (West2East). West2East is currently owned 51 percent by a subsidiary of Kinder Morgan Partners, L.P. (Kinder Morgan), 25 percent by a subsidiary of Sempra Energy, and 24 percent by a subsidiary of ConocoPhillips Company

¹ On January 25, 2008, Rockies Express filed an amendment in order to relocate its proposed Hamilton Compressor Station in Warren County, Ohio.

² 15 U.S.C. § 717f(c) (2000).

(ConocoPhillips).³ Rockies Express is a natural gas company as defined by section 2(6) of the NGA⁴ and is subject to the jurisdiction of the Commission.

4. On August 9, 2005, the Commission issued an order authorizing Rockies Express⁵ to construct and operate approximately 327 miles of pipeline facilities in two phases to transport gas out of supply basins in Colorado and Wyoming to the Cheyenne Hub in Weld County, Colorado (the REX/Entrega project).⁶ Specifically, in Phase I, we authorized Rockies Express to construct and operate approximately 136 miles of 36-inch diameter pipeline from an interconnect with TransColorado Gas Transmission Corporation (TransColorado) at the Meeker Hub in Rio Blanco County, Colorado, north to the Wamsutter Hub in Sweetwater County, Wyoming (Segment 1), and to construct and operate approximately 191 miles of 42-inch diameter pipeline from the Wamsutter Hub east to the Cheyenne Hub (Segment 2). Phase I is complete and it went into service on February 14, 2007, with an initial capacity of 750,000 dekatherms (Dth) per day.

5. In Phase II of the REX/Entrega project, we authorized Rockies Express to construct three compressor stations, referred to as the Meeker, Big Hole, and Wamsutter Compressor Stations.⁷ The Phase II compression facilities were designed to increase the capacity of the Phase I facilities from 750,000 to 1,100,000 Dth per day on Segment 1 and from 750,000 to 1,500,000 Dth per day on Segment 2.⁸ Except for the Big Hole

³ Rockies Express also states that upon completion of construction of the project, the ownership interests of the subsidiaries of Kinder Morgan and ConocoPhillips will change to 50 percent and 25 percent, respectively.

⁴ 15 U.S.C. § 717a(6) (2000).

⁵ Rockies Express was formerly known as Entrega Gas Pipeline LLC (Entrega). On April 11, 2006, Rockies Express and Entrega merged into a single entity. Pursuant to the merger agreement, Entrega continues to exist after the merger as the surviving entity, under the name "Rockies Express Pipeline LLC."

⁶ *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, *order on reh'g*, 113 FERC ¶ 61,327 (2005).

⁷ In a July 8, 2007 letter order, the Director of the Office of Energy Projects (OEP) granted Rockies Express an extension until June 30, 2009 to place into service the Big Hole Compressor Station located on Segment 1 between the Meeker and Wamsutter Compressor Stations.

⁸ Originally, in Phase II, we certificated the capacity on the entire REX/Entrega project at 1,500,000 Dth per day. However, due to changes in transportation demand,
(continued...)

Compressor Station, the REX/Entrega project is completed and in service.⁹ The REX/Entrega project facilities represent rate Zone 1 of the Rockies Express pipeline system.

6. On April 19, 2007, we authorized Rockies Express to construct and operate a 713-mile long, 42-inch diameter pipeline from the terminus of the REX/Entrega project at the Cheyenne Hub to an interconnect with Panhandle Eastern Pipe Line Company (Panhandle) in Audrain County, Missouri (the REX-West project).¹⁰ Rockies Express proposed that REX-West would have a capacity of 1,500,000 Dth per day and would interconnect with five pipelines before reaching its terminus.¹¹ The REX-West project facilities represent rate Zone 2 of the Rockies Express pipeline system.¹²

II. Proposals

7. Rockies Express states that the proposed REX-East project is the third leg of its system and is designed to extend the system from Missouri to Ohio. Rockies Express asserts that its completed pipeline system will ultimately link supplies of natural gas in

Rockies Express requested, and the Director of the Division of Pipeline Certificates granted, a reduction in the certificated capacity of Segment I of the REX/Entrega project between the Meeker and Wamsutter Compressor Stations to 1,100,000 Dth per day. *Rockies Express Pipeline, L.C.C.*, 116 FERC ¶ 62,151 (2006).

⁹ By letters dated January 8 and January 11, 2008, Rockies Express notified the Commission that the Wamsutter and Meeker Compressor Stations commenced service on January 1, 2008.

¹⁰ *Rockies Express Pipeline LLC*, 119 FERC ¶ 61,069 (2007) (the April 19 Order). The Commission issued a Preliminary Determination for the REX-West project in *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272 (2006) (the *REX-West PD*).

¹¹ On May 1, 2008, the Director of the Division of Pipeline Certificates granted an extension of time until July 30, 2008 to make the facilities available for service.

¹² The April 19 Order also authorized (1) TransColorado to add compression on its facilities, permitting shippers to transport an additional 250,000 Dth per day into the Rockies Express system at the Meeker Hub; (2) Questar Overthrust Pipeline Company (Overthrust) to construct and operate a pipeline designed to supply 625,000 Dth per day of capacity to Rockies Express at the Wamsutter Hub; and (3) a capacity lease agreement between Overthrust and Rockies Express whereby Rockies Express acquired 625,000 Dth per day of firm transportation capacity on Overthrust's system, with the right under certain conditions to increase the leased firm transportation capacity.

the Rocky Mountain supply basin to major markets in Illinois, Indiana, Ohio, and the eastern United States.

A. Facilities

1. Pipeline

8. Rockies Express proposes to construct and operate approximately 639 miles¹³ of 42-inch-diameter mainline pipeline with appurtenant facilities commencing at the eastern terminus of the REX-West project in Audrain County, Missouri eastward to an interconnect with Dominion Transmission, Inc., Dominion East Ohio, and Texas Eastern Transmission, LP (Texas Eastern) at the Clarington Hub in Monroe County, Ohio. Rockies Express states that the pipeline will have a capacity of 1,800,000 Dth per day and a maximum allowable operating pressure of 1,480 psig.¹⁴ The REX-East facilities downstream of the terminus of the REX-West facilities will represent Zone 3 of the Rockies Express pipeline system.

2. Compressor Stations

9. Rockies Express requests authorization to construct and operate seven new compressor stations, five on the proposed REX-East project (Zone 3) and one each on the REX/Entrega facilities (Zone 1) and the REX-West facilities (Zone 2), with a system total of 235,610 horsepower (hp) of compression. The five mainline compressor stations on the REX-East pipeline facilities will consist of: (1) 41,000 hp of compression using two gas turbines at the Mexico Compressor Station in Audrain County, Missouri; (2) 36,810 hp of compression using five gas reciprocating units at the Blue Mound Compressor Station in Christian County, Illinois; (3) 41,000 hp of compression using two gas turbines at the Bainbridge Compressor Station in Putnam County, Indiana; (4) 35,000 hp of compression using two electric-driven centrifugal units at the Hamilton Compressor Station in Warren County, Ohio; and (5) 20,450 hp of compression using three gas reciprocating units at the Chandlersville Compressor Station in Muskingum County, Ohio.

¹³ On July 6, 2007, Rockies Express filed a letter stating that it had made some route changes that increased the length of the proposed pipeline from 637.8 to 639.1 miles.

¹⁴ Rockies Express proposes to phase in service for the REX-East facilities, with 1,600,000 Dth per day of capacity anticipated to be in service on December 30, 2008, and the full 1,800,000 Dth per day in service on June 30, 2009.

10. On the REX/Entrega facilities, Rockies Express' proposed Arlington Compressor Station will consist of 24,540 hp of compression using three gas reciprocating units in Carbon County, Wyoming. On the REX-West facilities, Rockies Express' proposed Bertrand Compressor Station will consist of 36,810 hp of compression using five gas reciprocating units in Phelps County, Nebraska. Rockies Express states that the proposed Arlington Compressor Station will increase the capacity on the REX/Entrega facilities between the Wamsutter and Cheyenne Hubs to 1,800,000 Dth per day and that the proposed Bertrand Compressor Station will increase the capacity on the REX-West facilities to 1,800,000 Dth per day.

3. Meter Stations

11. Rockies Express proposes to construct and operate 19 delivery meter stations at 13 locations along the REX-East pipeline in order to deliver gas to: Natural Gas Pipeline Company of America (Natural); Ameren Power Company;¹⁵ Trunkline Gas Company; Midwestern Gas Transmission Company; Panhandle; Citizens Gas and Coke Utility; Indiana Gas Company; ANR Pipeline Company (ANR); Columbia Gas Transmission Corporation (two interconnections); Dominion Transmission, Inc. (three interconnections); Texas Eastern (two interconnections); Texas Gas Transmission, LLC; Vectren Company; Tennessee Gas Pipeline Company; and Dominion East Ohio.¹⁶ Rockies Express also proposes to construct and operate lateral facilities, ranging in length from less than one-tenth of a mile to 1.8 miles, to connect its mainline to the meter stations at these interconnects. The proposed meter stations are more specifically described in Appendix A.¹⁷

B. Open Season

12. Rockies Express states that it conducted an open season for both REX-West and REX-East from November 9 through December 19, 2005. Rockies Express contends that

¹⁵ Ameren Power Company was formerly known as Illinois Power Company.

¹⁶ On February 11, 2008, Rockies Express supplemented its application to make several adjustments to the locations of its proposed delivery meter stations.

¹⁷ Rockies Express will install appurtenant facilities under section 2.55(a) of the Commission's regulations including motor control center buildings with a small office for personnel at each of the planned compressor stations, pig launching and receiving equipment, 42 mainline block valves at 20-mile intervals along the proposed REX-East project, fuel meters, and auxiliary equipment at each of the meter stations that will include electronic flow measurement equipment, chromatographs, valves, building, and piping.

it designed its combined REX-West and REX-East open season to provide incentives for shippers to make large, long-term firm transportation commitments to the projects. According to Rockies Express, the open season offered greater benefits, in terms of transportation rates and other rate-related contractual benefits, to shippers based on the quantity of firm transportation commitment. As more fully described in the REX-West PD, Rockies Express established three specific classes of shippers based on awarded capacity: Foundation Shippers, Anchor Shippers, and Standard Shippers.¹⁸ Rockies Express asserts that all potential shippers were provided an equal opportunity in the open season to obtain the benefits and rights of each shipper category.

13. Foundation Shippers received the most beneficial negotiated reservation rates and contractual rights. This group included shippers executing precedent agreements for long-term capacity commitments on REX-West and REX-East equal to or exceeding 500,000 Dth per day. Anchor Shippers consisted of shippers making long-term capacity commitments to REX-West and REX-East by executing precedent agreements for firm transportation equal to or exceeding 200,000 Dth per day, but less than 500,000 Dth per day. Standard Shippers consisted of shippers entering into precedent agreements on REX-West and REX-East for firm transportation commitments of less than 200,000 Dth per day. The benefits afforded the various shipper classifications are described in the *REX-West PD*.¹⁹

14. The identities of the shippers, their capacity commitments, and the length of their contracts are listed in Appendix B. Rockies Express states that the shippers committed to REX-East are the same shippers that were described in the REX-West PD. Rockies Express states that the executed precedent agreements that apply to both REX-West and REX-East are the same as the agreements that were filed in the REX-West application. The Commission described and approved the conduct of the open season, as well as the shippers' rates and rights and certain non-conforming provisions in two precedent agreements in the *REX-West PD*.²⁰

15. Rockies Express explains that shippers originally signed precedent agreements for a total of 1,600,000 Dth per day on REX-West, increasing to 1,800,000 Dth per day after construction of the REX-East proposals described herein.²¹ In addition, Rockies Express

¹⁸ The *REX-West PD*, 116 FERC ¶ 61,272 at P 21-26.

¹⁹ *Id.* at P 23-25.

²⁰ *Id.* at P 21-26, 69-73.

²¹ Four shippers voluntarily agreed to reduce their maximum daily transportation quantity on REX/Entrega and REX-West by a total of 100,000 Dth per day until the REX-East facilities go into service. When REX-East is initially placed in service,

(continued...)

states it has been able to obtain commitments for nearly all of the 1,800,000 Dth per day capacity of REX-East, with only 12,000 Dth per day unsubscribed. All shippers, except for one, have subscribed firm long-haul transportation through Zones 1, 2, and 3.²²

C. Rates

16. Rockies Express estimates that the cost of the REX-East facilities will be \$2,172,953,630.

17. Rockies Express proposes to offer cost-based firm (Rate Schedule FTS) and interruptible (Rate Schedule ITS and PALS) open-access transportation services on a non-discriminatory basis under Part 284 of the Commission's regulations.

18. Rockies Express also seeks a predetermination that it may roll the costs of the Arlington and the Bertrand Compressor Stations into the recourse rates for Zones 1 and 2, respectively, in a future rate case. Rockies Express estimates that the first year costs-of-service for the Arlington and Bertrand Compressor Stations will be approximately \$8.06 million and \$11.59 million, respectively.²³ Rockies Express states that it is not proposing any change to the Zones 1 and 2 recourse rates at this time.

D. Justification for Proposals

19. Rockies Express contends that the increase of capacity on its existing facilities from 1,500,000 to 1,800,000 Dth per day will enable it to transport more gas from the Rocky Mountains eastward. Rockies Express further contends that the proposed REX-East project will link growing Rocky Mountain gas supplies directly to markets in the Midwest, offering consumers greater reliability and more price competition. Rockies Express contends that the project will help alleviate take-away capacity constraints in Rocky Mountain supply basins, increasing the nation's supply portfolio. Rockies Express concludes that customers across the nation will benefit from access to such new and reliable supplies of domestic gas.

increasing the capacity of the system to 1,600,000 Dth per day, those contracts will no longer be reduced. When the full system capacity of 1,800,000 Dth per day is placed in service, another shipper will have its maximum daily quantity increased by 200,000 Dth per day.

²² Coral Energy Resources L.P. contracted for 28,000 Dth per day in Zone 1 (REX/Entrega) and Yates Petroleum Corporation contracted for the corresponding 28,000 Dth per day in Zones 2 (REX-West) and 3 (REX-East).

²³ See Exhibit N, Schedules 2 and 3.

III. Interventions

20. Notice of Rockies Express' application in Docket No. CP07-208-000 was published in the *Federal Register* on May 21, 2007 (72 Fed. Reg. 28,482). Notice of Rockies Express' application in Docket No. CP07-208-001 was published in the *Federal Register* on February 5, 2008 (73 Fed. Reg. 10,238). The parties listed in Appendix C filed timely, unopposed motions to intervene.²⁴ The Missouri Public Service Commission filed a notice of intervention in Docket No. CP07-208-000.

21. The following parties filed untimely motions to intervene: BP America Production Company and BP Energy Company (BP Companies), jointly; Central Illinois Pipeline Association (CIPA);²⁵ Chevron Natural Gas, a division of Chevron U.S.A. Inc.; El Paso Marketing, L.P.; Elrod Water Company, Inc., d/b/a Hoosier Hills Regional Water District (Hoosier Hills); Laclede Gas Company (Laclede); Dave McCarroll; MoGas Pipeline LLC (MoGas); Dean and Nancy Mowrey; Murray Energy Corporation, Consolidated Land Company, and American Energy Corporation (Murray Companies), jointly; North Dearborn Water Corporation, Franklin County Water Association, Inc., and Tri-Township Water Corporation (Water Companies), jointly; Richard and Sandy Petty; Tom Sanders individually and on behalf of Sanders Financial Corporation; Tom and Linda Scothorn; and Texas Eastern. Further, the Indiana Utility Regulatory Commission and the Indiana Office of the Utility Consumer Counselor filed an untimely, joint motion to intervene.²⁶ The parties filing the untimely motions have demonstrated an interest in this proceeding and have shown good cause for intervening out of time. Further, the untimely motions will not delay, disrupt, or otherwise prejudice this proceeding. Thus, we will grant the untimely motions to intervene.

22. MoGas, the Murray Companies, and the Water Companies filed comments on Rockies Express' application. Rockies Express filed answers to MoGas' and the Murray Companies' comments. MoGas and the Murray Companies' filed answers to Rockies Express' answer. Rockies Express filed an answer to MoGas' answer and, in turn, MoGas filed an answer to that answer. Laclede filed an answer to MoGas' and Rockies Express' pleadings.

²⁴ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2007).

²⁵ CIPA states that its members are affected landowners, many of whom received no information on the proposed pipeline until December 2007. The members of CIPA are listed in Appendix D.

²⁶ All of the untimely motions to intervene were filed in Docket No. CP07-208-000.

23. Answers to answers are not allowed under our rules.²⁷ Nevertheless, we will accept MoGas', Laclede's and the Murray Companies' answers and Rockies Express' answers to MoGas because these pleadings provided information that assisted us in our decision making.

24. The motions of BP Companies, EnCana Corporation, Wyoming Pipeline Authority, and Yates Petroleum Corporation contained comments supporting Rockies Express' proposals.

IV. Discussion

25. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.²⁸

A. Application of the Certificate Policy Statement

26. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.²⁹ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

27. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might

²⁷ 18 C.F.R. § 385.213(a)(2) (2007).

²⁸ 15 U.S.C. §§ 717f(c), (e) (2000).

²⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

28. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Here, Rockies Express proposes to recover the majority of the costs of the REX-East facilities through a new zoned rate (Zone 3), where there are no existing customers. In addition, as discussed below, we find that rolling the costs of the Arlington Compressor Station into Rockies Express' Zone 1 rates, and rolling the costs of the Bertrand Compressor Station into its Zone 2 rates will not result in subsidization of those facilities by existing customers.³⁰ Thus, existing shippers will not subsidize the REX-East project.

29. There will be no adverse operational impact on Rockies Express' existing customers as a result of the construction, since REX-East is properly designed to provide up to 1,800,000 Dth per day of additional capacity without degrading service to existing customers. In fact, construction of the REX-East facilities will enable Rockies Express' existing shippers to get increased volumes of their gas to new markets.

30. The REX-East project is an extension of Rockies Express' system designed to provide transportation of growing Rocky Mountain gas supplies to Midwestern and Eastern markets. There is no evidence that service on other pipelines will be displaced as a result of the construction of REX-East and no pipeline objected to Rockies Express' proposals. For these reasons, we conclude that existing pipelines and their customers will not be adversely affected by REX-East.

31. In the April 19 Order, we directed Rockies Express to file information annually, during the three-year period after the in-service date of the REX-West facilities, on the potential for waste heat recovery on its system. In its application for the REX-East project, Rockies Express states that it will include information regarding the proposed facilities in that discussion. We direct Rockies Express to file information annually on

³⁰ Rates in Zones 1 and 2 remain unchanged by this order. However, rolled-in rate treatment would reduce those rates, as the revenues from the increased capacity in Zone 1 and Zone 2 are greater than the costs of service for the proposed facilities in those zones.

the potential for waste heat recovery from the REX-East facilities, during the three-year period after the in-service date for those facilities.

32. Under section 7(h) of the NGA, the holder of a Commission-issued certificate has the right to exercise eminent domain to acquire the land necessary to construct and operate its proposed facilities when it cannot reach a voluntary agreement with the landowner. Landowners whose land may be condemned have an interest in the applicant's proposals, as does the community near the right-of-way. In our consideration of landowner and community interests under the Certificate Policy Statement, we seek to avoid unnecessary construction in order to minimize the applicant's power to condemn land to construct facilities under the eminent domain rights conveyed by the Commission's certificate.³¹

33. The REX-East project will require permanent easements for 4,049.2 acres to accommodate the permanent pipeline right-of-way and above-ground facilities. Rockies Express states that it has obtained easements from approximately 56 percent of affected landowners and is in the process of negotiating with the majority of the remaining landowners.³² Fifty-nine percent of the project will parallel existing rights-of-way, reducing the need to create new pipeline corridors. In the final environmental impact statement (EIS), Commission staff considered 10 major route alternatives and 64 route variations requested by landowners. Based on their analysis, Commission staff recommended that 18 route variations be incorporated into a revised project route addressing landowner concerns. The Commission is incorporating these route variations into the certificate, and therefore, we find that the effect of Rockies Express' proposed project on landowners and communities will be minimized.

34. Rockies Express has entered into long-term precedent agreements for almost 100 percent of the capacity of the REX-East project. Further, as we have previously recognized, there is a need for increased pipeline capacity to access gas supplies produced in the Rocky Mountain region.³³ REX-East, in conjunction with the previously-certificated REX/Entrega and REX-West facilities, is designed to meet that need. Based on the benefits REX-East will provide to the market and the lack of any significant identified adverse impacts on existing customers, other pipelines, and limited impacts on landowners and communities, we find, consistent with the Certificate Policy

³¹ See also *Order Clarifying Statement of Policy*, 90 FERC at 61,398.

³² See Rockies Express' March 6, 2008 data response.

³³ See e.g., *REX-West PD*, 116 FERC ¶ 61,272 at P 40; *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 23 (2005).

Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of Rockies Express' proposals.

B. MoGas' Request for an Interconnection

1. Pleadings

35. MoGas states that it wants to interconnect with Rockies Express but has been unable to reach an agreement because of Rockies Express' refusal to pay for the cost of the interconnect.³⁴ MoGas states that it wants an interconnection to obtain new sources of gas to transport to markets in and around St. Louis. MoGas contends that it contacted Rockies Express to request an interconnection during the open season and "shortly after" the REX-West application was filed. MoGas asserts that it was told that Rockies Express would get back to MoGas. MoGas contends that only after the REX-East application was filed and the comment period had run did it learn that Rockies Express would not construct an interconnection unless MoGas paid for the connection.

36. In contrast, MoGas alleges that Rockies Express agreed to pay all of the costs of the proposed 19 delivery points³⁵ with other pipelines and LDCs along the REX-East project route, as well as five delivery points along the REX-West project route. MoGas contends that Rockies Express' refusal to pay for an interconnection with MoGas is discriminatory and violates the Commission's fundamental pro-competitive principle of nondiscriminatory access. To support its allegation of discrimination, MoGas cites the Commission's interconnection policy announced in *Panhandle Eastern Pipe Line Corporation (Panhandle)*, 91 FERC ¶ 61,037, at 61,140-41 (2000). MoGas acknowledges that *Panhandle* requires the party desiring access to the pipeline to pay for the interconnection, but notes that Rockies Express discriminatorily waived that condition for the other interconnecting pipelines but not for MoGas.³⁶

³⁴ MoGas, formally known as Missouri Interstate Gas, LLC, is a 263-mile long interstate pipeline in eastern Missouri that serves local distribution companies (LDCs) and industrial customers around the St. Louis, Missouri metropolitan area. We found MoGas to be an interstate pipeline in *Mo. Interstate Gas, LLC*, 119 FERC ¶ 61,074 (2007), *order on reh'g and compliance*, 122 FERC ¶ 61,136, *order on compliance*, 123 FERC ¶ 61,131 (2008).

³⁵ In its pleadings, MoGas asserts that REX-East will have 20 delivery points with other pipelines and LDCs. REX-East will have 19 delivery points.

³⁶ Rockies Express asserts that it did not agree to bear the costs of the existing interconnections along the REX-West route and the proposed interconnections along the REX-East route. Rather, Rockies Express maintains that the costs of the interconnections (continued...)

37. In addition, MoGas notes that Rockies Express proposed three interconnects with pipeline affiliates, including one with Natural at a point “immediately downstream” of the point requested by MoGas, and that Natural also serves the St. Louis metropolitan area.

38. In its August 9, 2007 pleading, Rockies Express states that to secure large, long-term capacity commitments, it offered incentives to shippers based on the quantity of their firm transportation commitments and listed eight receipt and 32 delivery points in the open season from which shippers could choose. Rockies Express contends that it developed the list of points based on market data as to size, take-away capacity, likely demand, land availability, and constructability. Rockies Express states that it did not identify MoGas as having a sufficiently active market to support an initial interconnect.³⁷ However, Rockies Express asserts that the list of points was not exclusive, since it invited shippers to express interest in additional receipt or delivery points in the open season and when negotiating precedent agreements so that it could identify other interconnection points. After the open season, Rockies Express contends that it discussed the requested delivery points with its shippers, reached agreement on the location of the delivery points, and, as a result, requested authorization from the Commission to construct and operate 19 delivery points along the REX-East route. During and after the conclusion of the open season, Rockies Express asserts that no shipper requested a delivery point to interconnect with MoGas. Rockies Express also states that MoGas did not participate in the open season or request capacity on the Rockies Express system. When MoGas expressed its desire for an interconnection after the open season, Rockies Express acknowledges that it advised MoGas that MoGas would have to pay for the delivery point.

39. Rockies Express asserts that it is not practical, nor does it make economic sense, to interconnect with all pipelines that cross the REX-East project route³⁸ and the fact that it did not propose an interconnection for MoGas does not amount to undue discrimination.

on REX-West and REX-East were included in the recourse rates which were designed to recover the costs of the projects, including the costs of the delivery points. Rockies Express contends that it entered into negotiated rate contracts that reflect an acceptable recovery for the projects’ costs. In contrast, MoGas claims that this contention is “sheer semantics,” since the shippers on Rockies Express agreed to bear the costs of the other interconnects in the recourse rates, but MoGas must directly bear the cost of its interconnect.

³⁷ Rockies Express’ September 6 answer at 3.

³⁸ Rockies Express estimates that the cost of the interconnection with MoGas will be over \$4 million.

Rockies Express contends that its proposals reflect the interconnections identified through a market-driven selection process conducted in conjunction with its open season. Rockies Express maintains that it is not required to construct and pay for an interconnection where there is no demonstrated market and its shippers have not expressed demand for the point. As an open-access pipeline, Rockies Express also asserts that it will interconnect with other pipelines at any point on its system, barring operational constraints, including points where it does not see economic value for itself, provided that the pipelines seeking access agree to pay for the interconnection. Further, Rockies Express asserts that it is not unduly discriminatory to require MoGas to pay for the interconnect, since the proposed interconnects are being constructed to accommodate shippers that participated in the open season and made long-term contractual commitments to support the project, whereas MoGas has requested an interconnection with no associated contractual commitment.

40. Rockies Express contends that under the interconnection policy in *Panhandle*, the party seeking the interconnection must be willing to bear the costs of the construction. Rockies Express asserts that it is within its rights to insist that it will not bear the cost of an interconnection with MoGas. Rockies Express concludes that access to the REX-West and REX-East projects was provided in a fair, non-discriminatory, and transparent basis in the open season.

41. In its September 6 pleading, Rockies Express asserts that it did not favor its affiliates and that it is reasonable that shippers would want an interconnection between Rockies Express and Natural because Natural provides the downstream capability to deliver gas to large markets in the Midwest. Rockies Express contends that MoGas is not in the same situation as Natural, since MoGas is a 12-inch diameter line with a capacity of 85,000 Dth per day that serves the St. Louis area. By contrast, Rockies Express points out that Natural has two 30-inch diameter lines and one 36-inch diameter line with a capacity of up to 1,659,000 Dth per day that serves Chicago, Illinois, as well as points in Wisconsin and northwest Indiana.³⁹ In addition, Rockies Express contends that its proposed interconnection with Natural is not “immediately downstream” of the point requested by MoGas, but 150 miles away.

42. In its August 22 pleading, MoGas contends that the question in this case is not whether MoGas and the subscribing shippers are similarly situated for discrimination analysis purposes, but whether specific factual differences justify the difference in interconnection treatment accorded MoGas as compared to that accorded to the other interconnections. MoGas asserts that Rockies Express “hand picked” the list of eight

³⁹ Rockies Express notes that Natural has a lateral in Illinois that ends nine miles east of the Mississippi River that serves power plants in Illinois south and east of St. Louis.

receipt points and 32 delivery points in the open season, which shows that Rockies Express developed an unjustified preferred list of interconnections first and then determined if the interconnections could be constructed. MoGas also contends that Rockies Express should demonstrate the specific factual basis for developing a preferred list of interconnections or demonstrate the factual differences that justified Rockies Express' exclusion of MoGas. MoGas asserts that Rockies Express' statement that "it did not identify MoGas as having a sufficiently active market to support an initial interconnect" begs the question of what justified the preferred list.

43. In its September 21 pleading, MoGas contends that Rockies Express' use of the *Panhandle* policy is irrational. Specifically, MoGas asserts that Rockies Express cannot discriminate against MoGas in developing the project and then require MoGas to bear the costs of construction under the *Panhandle* policy.

2. Commission Holding

44. MoGas contends that Rockies Express' refusal to pay for an interconnection with MoGas is discriminatory.

45. In developing a project to serve new markets or increase service to existing markets, a pipeline applicant is required to advertise the availability of capacity on its contemplated project via an open season. The open season is designed to alert all interested shippers that they may subscribe to capacity on the contemplated facilities. Once potential shippers have come forward, it is expected that the pipeline will work with the shippers to determine the design of the facilities to meet the market demand for the project. However, a pipeline applicant is free to develop, design, and propose a new pipeline project as it sees fit with the knowledge that the Commission must find its proposals to be in the public convenience and necessity under the NGA before construction can commence.

46. In the development of the Rockies Express system, MoGas did not participate in the open season held for the REX-West and REX-East projects, nor did the shippers on MoGas' system request service from Rockies Express during the open season. As a result, Rockies Express states that it did not propose an interconnection with MoGas as part of its project.

47. Rather, Rockies Express sought authority to construct five interconnections on the REX-West project and 19 interconnections on the REX-East project because shippers requested service at these points and the costs of the interconnections necessary to serve these shippers are reflected in the rates those shippers will pay for service on Rockies Express. In contrast, no shipper requested an interconnection between Rockies Express and MoGas during the open season and inclusion of the costs of a MoGas interconnection in Rockies Express' rates would result in those costs being borne by all shippers when no shipper uses the interconnection. Since it has not been demonstrated that a MoGas

interconnection would provide an actual benefit to any interested shipper or to the system as a whole, we see no justification for inclusion of the costs in the system rates, or requiring Rockies Express to pay for such an interconnection. Under the circumstances presented here, we find that Rockies Express did not discriminate against MoGas. If MoGas desires an interconnection with Rockies Express, MoGas must comply with the interconnection policy in *Panhandle*.

48. MoGas also asserts that Rockies Express discriminatorily hand-picked a preferred list of interconnections in the open season which did not include MoGas.

49. In the open season procedures, Rockies Express listed 32 delivery points from which shippers could choose. Rockies Express' open season procedures also provided that:

[i]f a party desires a receipt point and/or delivery point that is not already listed . . . the party should specify such desired points in the space provided and should indicate whether or not the stated service request is contingent on Rockies Express' accommodation of such other receipt point and/or delivery points.

50. The list of 32 delivery points was not exclusive, since potential shippers could express an interest in other receipt or delivery points that were not listed. We see no evidence that a potential shipper that desired service from Rockies Express via MoGas was precluded from requesting such service in Rockies Express' open season. Based on these facts, we conclude that Rockies Express did not discriminate against MoGas by listing possible interconnects in the open season procedures.

51. In addition, MoGas contends that Rockies Express favored its affiliate by proposing an interconnection with Natural.

52. Beyond the described physical differences between the Natural and MoGas systems, a Rockies Express shipper requested an interconnection between Natural and Rockies Express. No shipper requested an interconnection between MoGas and Rockies Express. Further, although Natural has a lateral that serves some customers south and east of St. Louis, there is no evidence in the record that suggests that Rockies Express denied an interconnection with MoGas so that its affiliate could obtain a competitive advantage with MoGas. Under these circumstances, we conclude that Rockies Express did not discriminate against MoGas in favor of Rockies Express' affiliate.

C. Rates and Tariff Issues

1. Recourse Rates

53. Rockies Express proposes two-part recourse rates for firm transportation service based on the applicable cost of service associated with its Zone 3 facilities. Rockies Express also proposes one-part rates for interruptible transportation service based on a 100 percent load factor derivative of the firm transportation rate. The Rate Schedule PALS rates were designed and developed as derivative rates of the interruptible rates, consistent with the method used to derive such rates included in the currently-effective Rockies Express tariff.

54. In developing the proposed recourse rates for the new REX-East facilities, Rockies Express used a capital structure of 55 percent equity and 45 percent debt with a 13 percent return on equity and a 6.75 percent cost of debt, resulting in an overall rate of return of 10.19 percent. Rockies Express asserts that the proposed 13 percent return on equity is reasonable, considering the higher risk attendant with a pipeline project of this size, and is consistent with the allowed rates of return on equity that the Commission has granted in major construction projects for other pipelines with similar capital structures. In addition, Rockies Express contends that the 10.19 percent rate of return is identical to the rate approved by the Commission for the REX-West project. Rockies Express also proposes to depreciate its new gas transmission plant using a 2.86 percent straight-line depreciation rate based on a 35-year useful life. Rockies Express contends that the 35-year useful life is consistent with other Commission approved decisions for pipelines that depend on the Northern Rocky Mountain and Western Canadian Sedimentary Basin.⁴⁰ Rockies Express contends that the 2.86 percent depreciation rate is identical to the depreciation rate approved by the Commission for Zone 3.

55. We have reviewed Rockies Express' proposed cost of service, allocation, and rate design for its initial recourse rates, including its proposed overall rate of return of 10.19 percent and depreciation rate of 2.86 percent, and find that they reasonably reflect current Commission policy. Further, no party raised any issues associated with Rocky Express' proposed recourse rates. Thus, we will approve the proposed initial recourse rates for the REX-East project.

56. Rockies Express proposes a fuel and lost and unaccounted-for gas (FL&U) tracker that will separately delineate FL&U in Zone 3 for recovery of costs from shippers using those facilities. The initial FL&U percentage applicable to the REX-East facilities is 1.62 percent. The addition of the Arlington and Bertrand Compressor Stations in Zones 1 and

⁴⁰ *Williston Basin Interstate Pipeline Co.*, 104 FERC ¶ 61,036, at P 54 (2003), *order on reh'g*, 107 FERC ¶ 61,164, at P 27 (2004).

2 will result in an increase of the FL&U to 1.00 percent for Zone 1 and 1.64 percent for Zone 2. We will approve Rockies Express' proposed FL&U tracker rates for Zones 1, 2, and 3. Rockies Express shall file the actual tariff sheets not less than 30 days, and not more than 60 days, prior to commencement of service on the REX-East facilities.

2. Interruptible Services Revenue Crediting

57. Rockies Express allocated a significant level of costs to interruptible service in the development of its recourse rates for REX-East.⁴¹ The costs allocated to Zone 3 reflect the limited opportunity to engage in interruptible transportation on REX-East, which is over 95 percent subscribed by long-term, negotiated rate contracts. Based on the proposed allocation of costs to interruptible service, Rockies Express proposes to eliminate the interruptible revenue sharing mechanism from the currently-effective tariff.

58. The Commission's policy regarding interruptible services requires either a 100 percent credit of the interruptible revenues, net of variable costs, to firm and interruptible customers or an allocation of costs and volumes to these services.⁴² Since Rockies Express allocated costs to interruptible services in the calculation of its Zone 3 rate, consistent with Commission policy, we will accept its proposal to eliminate the existing interruptible revenue sharing mechanism.

3. Rolled-in Rate Treatment

59. Rockies Express states that the proposed Arlington and Bertrand Compressor stations are necessary to enable the pipeline system to transport up to 1.8 million Dth per day of natural gas. In addition, the two compressor facilities will serve to optimize the reliability and efficiency of Rockies Express' certificated facilities and will benefit shippers by providing increased flexibility. Rockies Express also states that, as indicated in Exhibit N of the application, the incremental costs of the facilities are less than the revenues generated on the new contract capacity created by the addition of the two compressor stations.

60. The Certificate Policy Statement permits these types of facilities to be rolled in.⁴³ The proposed facilities will benefit the system. Further, the costs of service for the incremental facilities are less than the revenues generated meaning that no shipper will subsidize the roll in of these costs. No shipper has objected to the rolled-in rate proposal.

⁴¹ Exhibit P of the application shows the calculation of the Zone 3 rates.

⁴² See *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 51 (2005).

⁴³ See Certificate Policy Statement, 88 FERC ¶ 61,227 (1999).

For these reasons, we will grant Rockies Express' request for a predetermination that the costs of the Arlington and Bertrand Compressor Stations may be rolled into its Zone 1 and 2 rates, respectively, absent a significant change of circumstances.

4. Non-Conforming Provisions

61. Rockies Express states that the precedent agreements for the REX-East project are the same agreements that apply to the REX-West project. In the *REX-West PD*, the Commission described and approved the conduct of the open season, as well as the shippers' rates and rights and certain non-conforming provisions in two of the precedent agreements.⁴⁴ The precedent agreement with the U.S. Minerals Management Service of the Department of Interior (MMS) includes certain rate and termination provisions necessary in order to permit MMS to implement the specific statutory requirements governing its Royalty in Kind (RIK) program.⁴⁵ The BP Energy precedent agreement includes certain commitments by Rockies Express to obtain a commitment by BP Energy to increase its initial 100,000 Dth per day of transportation capacity to 300,000 Dth per day of firm capacity when the REX-East project is fully in-service. The service agreements associated with the REX-East project will contain the same provisions as those associated with the REX-West project, which we previously approved in the *REX-West PD*.

62. Consistent with our ruling in the *REX-West PD*, we will approve the non-conforming provisions contained in the precedent agreements with MMS and BP Energy for service on the REX-East project facilities. The non-conforming provisions are not unduly discriminatory, reflect unique circumstances of the shippers, and are needed to ensure that the project gets built. However, Rockies Express must file, at least 30 days before the in-service date of the proposed facilities, executed copies of the firm service agreements with MMS and BP Energy and a tariff sheet identifying these agreements as non-conforming agreements.

D. Environmental Analysis

63. We evaluated the potential environmental impacts of Rockies Express' proposed REX-East project in the draft and final EISs to satisfy the requirements of the National

⁴⁴ *REX-West PD*, 116 FERC ¶ 61,272 at P 21-26, 69-73.

⁴⁵ "The Secretary may receive oil or gas royalties in-kind only if the Secretary determines that receiving royalties in-kind provides benefits to the United States that are greater than or equal to the benefits that are likely to have been received had royalties been taken in-value." Energy Policy Act of 2005, Pub. L. No. 109-58, § 342(d), 119 Stat. 594, 699 (2005).

Environmental Policy Act of 1969 (NEPA).⁴⁶ The United States Army Corps of Engineers (COE), the United States Fish and Wildlife Service (FWS), Natural Resources Conservation Service, and the Illinois Department of Agriculture (ILDOA) served as cooperating agencies in the preparation of the draft and final EISs.

64. On June 13, 2006, in Docket No. PF06-30-000, we approved Rockies Express' request to use the Pre-Filing Process for the proposed REX-East project. As part of our pre-filing review, on August 16, 2006, we issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed REX-East Project* (NOI).⁴⁷ We sent this notice to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries; newspapers; and other interested parties.

65. In response to the NOI and nine public scoping meetings held along the proposed REX-East route, we received numerous written and verbal comments from landowners, concerned citizens, public officials, and government agencies concerning project impacts on land uses (e.g., farming and residential), wetlands and waterbodies, water quality, vegetation and wildlife, threatened and endangered species, air and noise quality, future development, property values, cultural resources, the overall project purpose and need, safety, and potential alternatives to the proposed route and planned facilities.

66. On January 28, 2008, Rockies Express amended its application, revising the pipeline route in Warren and Butler Counties, Ohio and relocating the proposed Hamilton Compressor Station in Butler County, Ohio. On January 30, 2008, we sent a letter to landowners affected by the amendment. We received comments from three affected landowners who expressed concerns about agriculture, water quality, and safety.

67. On November 23, 2007, we issued a draft EIS. Public notice of the availability of the draft EIS was published in the *Federal Register*.⁴⁸ We mailed the draft EIS to federal, state, and local government agencies; elected officials; Native American tribes; local libraries and newspapers; intervenors; and other interested parties (i.e., affected landowners, miscellaneous individuals, and environmental groups who provided scoping comments or asked to remain on the mailing list). In addition, we sent the draft EIS to affected landowners who were added to the mailing list after the NOI was issued and landowners potentially affected by some of the alternatives under consideration. The public was given 45 days from the date of publication in the *Federal Register* to review

⁴⁶ 42 U.S.C. §§ 4321-4370f (2000).

⁴⁷ 71 Fed. Reg. 48,920 (August 22, 2006).

⁴⁸ 72 Fed. Reg. 68,138 (November 23, 2007).

and comment on the draft EIS. Nine public meetings were held in the project area to solicit comments and written and electronic comments were submitted directly to the Commission.

68. We received comment letters on the draft EIS from three federal agencies (the COE, United States Department of Interior, and United States Environmental Protection Agency), six state agencies (Indiana Department of Natural Resources [IDNR], Missouri Department of Conservation, Missouri Department of Natural Resources [MODNR], Ohio Department of Natural Resources [ODNR], Ohio Power Sitting Board, and the Wyoming State Engineers Office), eight local agencies, 10 organizations/companies, two Native American tribes, federal and state agencies, Rockies Express, and approximately 83 individuals. In addition, between January 7 and January 9, 2008, we received verbal comments from 85 individuals at nine public meetings held in Mexico, Missouri; Pittsfield and Springfield, Illinois; Rockville, Greenwood, and Greensburg, Indiana; and Trenton, Ashville, and Zanesville, Ohio. The verbal comments raised concerns about pipeline safety, impacts on future developments, drain tiles, farmland, land values, routing alternatives, endangered species, National Wild and Scenic Rivers, state parks, tree clearing, cultural resources, mining, water quality, forestland, and wetland mitigation.

69. On April 11, 2008, we issued the final EIS. Public notice of the availability of the final EIS was published in the *Federal Register*.⁴⁹ We mailed the final EIS to the same parties as the draft EIS, as well as to parties that commented on the draft EIS. The distribution list is provided in Appendix A of the final EIS.

70. The final EIS considers and responds to the concerns expressed to the draft EIS. The final EIS concludes that construction and operation of Rockies Express' proposed REX-East project will result in limited adverse environmental impacts. Those limited impacts will be most significant during the period of construction. The final EIS finds that the proposed expansion project will be an environmentally acceptable action if constructed and operated in accordance with applicable laws and regulations, Rockies Express' proposed mitigation plans, and the recommended mitigation measures set forth in the final EIS.

1. Landowner Comments on the Final EIS

71. Landowners commented on the draft and final EISs, voicing concerns about impacts on farmland,⁵⁰ drain tiles, depth of cover, future development, land values,

⁴⁹ 73 Fed. Reg. 21,339 (April 21, 2008).

⁵⁰ The project will cross 462.1 miles of agricultural lands, which is approximately 72 percent of the project acreage.

residential land, state parks, mining activity, earthquakes, groundwater, waterbodies, wetlands, forests, migratory birds, endangered species, cultural resources, air quality and noise, safety, need, and routing alternatives. The final EIS specifically addresses these concerns.⁵¹

72. In response to these landowner concerns, we will require Rockies Express to minimize and mitigate potential affects to prime farmlands by implementing the standard requirements identified in its Agricultural Impact Management Plan (AIMP), or for Illinois the Agricultural Impact Mitigation Agreement (AIMA) developed in consultation with the ILDOA. Because of the depth of drain tiles in the project area, Environmental Condition 109 requires that the pipeline be placed at least five feet deep in agricultural fields to avoid interference with subsurface agricultural drainage, unless the landowner agrees to a shallower depth. Environmental Condition 107 requires that drain tiles be installed or repaired by qualified drain tile contractors. The AIMP and AIMA require Rockies Express to use third-party agricultural monitors during construction.

73. In response to concerns regarding the proposed project's potential impact on planned development, Rockies Express agreed to site the pipeline along property boundaries and collocate the pipeline on existing rights-of-way, which typically follow lot lines to minimize potential impacts in areas where planned residential development has been identified. Operation of the proposed pipeline will not change the general use of the land and will only preclude the construction of above-ground structures within the 50-foot permanent right-of-way.

2. Alternatives

74. The final EIS evaluated the No Action or Postponed Action Alternatives, system alternatives, route alternatives, route variations, and above-ground facility site alternatives. While the No Action or Postponed Action Alternative would eliminate the short- or long-term potential permanent environmental impacts identified in the final EIS, REX-East's proposed objectives would not be met and new sources of Rocky Mountain gas would not be available to supply midwestern and eastern markets.

75. System alternatives included an evaluation of whether existing and proposed gas systems would meet REX-East's objectives, which is to transport 1,800,000 Dth of gas per day from the Rocky Mountain basins directly to markets in the midwest and east. We are unaware of any existing pipeline systems that could be expanded to meet the purpose of REX-East. The use of existing pipeline systems is not a viable alternative.

⁵¹ Appendix K of the final EIS includes copies of comments and letters from public meetings, federal agencies, state agencies, companies, and individuals. The specific concerns in these letters are identified and addressed in the final EIS.

76. The final EIS evaluated ten major route alternatives to determine if impacts could be avoided or reduced on environmentally sensitive resources, such as population centers, recreational and designated scenic areas, and wildlife and natural habitat management areas that would be crossed by the proposed facilities. We agree with the conclusions in the final EIS that an alternative route south of Mt. Zion, Illinois; two alternative routes north of Indianapolis; an alternative route through northern Johnson County, Indiana; an alternative route south of Caesar Creek Lake; an alternative route through Deer Creek State Park; and alternative crossings of the Mississippi and Little Miami Rivers, Big Darby Creek, and Wabash River do not offer clear environmental advantages over the proposed route. Thus, we will not require Rockies Express to adopt the alternatives.

77. The final EIS considered 64 requests for route variations. For 37 of the requests, we could not identify any feasible route variation that would avoid or minimize impacts to the environmental resources specified.⁵² The issues raised in these requests were addressed throughout section 4 of the final EIS. The final EIS adopted recommendations and mitigation measures that minimize or protect the environmental resources specified. We have included those mitigation measures in this order. We also evaluated 27 route variations in detail to minimize impacts along the proposed route. These variations were based on comment letters received from landowners or other stakeholders. We obtained information from field visits, Rockies Express, and various desktop resources, including aerial imagery used to identify technically feasible variations that could minimize environmental impacts. Of the 27 segments evaluated, we will require that Rockies Express incorporate 18 (Environmental Conditions 24 through 30, 32, 34, 35, 37 through 41, 43, 45, and 46) into a revised route including four that Rockies Express agreed to in previous filings. We will also require Rockies Express to continue consultations with landowners for four variations (Environmental Conditions 33, 36, 42, and 44) that will affect new landowners. These variations will increase the overall length of the proposed pipeline by approximately 1.4 miles. However, the variations address landowners' concerns, reduce forest fragmentation, and reduce the overall impact to forested lands by 0.9 mile.

78. We received numerous requests for route variations after the final EIS was issued. Environmental Condition 5 allows Rockies Express to make minor modifications to the pipeline route per landowner needs, as long as the modifications do not affect other landowners or sensitive environmental areas such as wetlands. Rockies Express can also file new route alignments, for written approval by the Director of OEP, for other modifications that may develop after this order is issued.

⁵² Table 3.5-1 in the final EIS summarizes the comments received on these route variations.

79. The final EIS examined alternative above-ground site locations for compressor and meter stations to avoid or minimize impacts to forested land, wetlands, and waterbodies, and to locate the facility as far as practicable from noise-sensitive areas (NSAs). Most of the proposed compressor and meter station sites are on agricultural land, away from NSAs and residential developments, and will not adversely affect sensitive environmental resources.

80. We also received landowner comments regarding the Hamilton and Bainbridge Compressor Stations.⁵³ The change to the location of the Hamilton Compressor Station site, as discussed in section 3.6.1 of the final EIS, addresses the landowner comments that we received on the originally proposed location. The change to the location of the Bainbridge Compressor Station site, as well as two landowner-suggested alternative locations are discussed in section 3.6.2. Our review of the locations of the Hamilton and the Bainbridge Compressor Stations indicates that the alternative locations are not environmentally preferable to Rockies Express' proposals.

3. Geology

a. Geologic Setting and Hazards

81. The majority of the pipeline route will cross areas of unconsolidated glacial deposits, but approximately 14 percent of the route will be in areas of shallow bedrock that may require trenching or blasting. Several sand and gravel pits and quarries are within 1,500 feet of the proposed pipeline, but construction will not prevent operation of these facilities. Seven oil or gas wells are within the proposed pipeline construction right-of-way. Environmental Condition 47 requires that Rockies Express file site-specific protection plans for oil and gas wells in the construction work area, prior to construction.

82. Seismicity, landslides, subsidence, and flooding/scour are geologic hazards identified in the project area. Although it does not cross any active faults, the pipeline could be affected by the New Madrid and Wabash Valley seismic zones. However, due to the low intensity of potential seismic events, as well the use of arc-welding techniques and design in accordance with 49 C.F.R. Parts 192 and 193, we do not expect seismic hazards to pose significant risks. We note that a moderate earthquake occurred approximately 90 miles from the project area in April 2008. There were no reports of ruptured existing interstate natural gas pipelines as a result of the earthquake or its aftershocks. Also, approximately 29 percent of the proposed route lies in areas

⁵³ We did not receive any landowner comments identifying any significant issues that would require further evaluation of alternative locations for the other five proposed compressor stations.

susceptible to moderate to severe landslides. In such areas, Rockies Express will employ mitigation measures outlined in its Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and Wetland and Waterbody Construction and Mitigation Procedures (Procedures).

83. Subsidence could occur due to karst features or abandoned underground mines. Approximately 24 percent of the pipeline route has the potential for karst features. To address karst-related subsidence, Environmental Condition 48 requires that prior to the start of construction Rockies Express file a plan, developed in consultation with the appropriate state agencies, for the identification of karst features and mitigation for crossing any such features. In order to further minimize impacts on pipeline construction in karst terrain, Environmental Condition 49 requires that prior to the start of construction Rockies Express file a contingency plan, developed in consultation with state and federal natural resource agencies, for horizontal directional drill (HDD) technology in the karst areas identified in Table 4.1.3-2 of the final EIS. The plan will include pre-construction identification of the potential for subsurface karst features and a procedure to limit the amount of mud lost to successfully complete the drill if a solution void were intercepted during an HDD. In addition to what is identified in Table 4.1.3-2 of the final EIS, the MODNR pointed out, and the commission noted, that karst features could occur from mileposts (MP) 21 to 42.7 in Missouri.

84. Blackburn Island, which is located on the Mississippi River, is prone to seasonal flooding. Rockies Express proposes to use this island as a staging area for HDD rigs during construction. In order to mitigate impacts if a flooding event were to occur during construction, Environmental Condition 52 requires that, prior to the start of construction, Rockies Express develop and file a High Water Contingency Plan for the Mississippi River crossing.

85. Seasonal and flash flooding hazards are potential concerns where the pipeline route will cross major streams and small watersheds. Although flooding does not present a risk to buried pipelines, bank erosion and/or scour could expose sections of pipe or cause them to become unsupported. In order to mitigate for potential scouring events, Environmental Condition 51 requires that Rockies Express consult with the IDNR and ODNR to discuss the scour susceptibility of waterbodies prior to the start of construction.

b. Coal Mining

86. We reviewed the comments provided by the Murray Companies and others, regarding construction through current or proposed coal mining regions of Belmont and Monroe Counties, Ohio. Specifically, the primary area of concern is an 8-mile segment of line between MPs 621 and 629, which traverses coal reserves held by the Murray Companies. At approximately MP 630, the proposed pipeline would enter American Energy Corporation's Century Mine. According to Rockies Express, the pipeline would only cross areas that are not currently being mined. However, the Murray Companies

currently hold mining rights and may decide to mine certain parts of the area in the future.

87. The pipeline will cross previously longwall-mined panels between MPs 629 and 635.⁵⁴ In its May 8, 2008 filing, Rockies Express indicated that its construction will be farther than 1,500 feet from any active longwall mining panel at all locations, except for one that is located near MP 634. Approximately 3,000 feet of construction will fall within the segment, with the closest point about 500 feet from a longwall mining panel. As construction moves east or west from this point, the separation increases.

88. On May 14, 2008, the Murray Companies responded to Rockies Express, stating that longwall mining panels are but one component of an active mining operation. While the proposed pipeline would not cross an existing longwall panel, the Murray Companies contend that the pipeline will directly cross the underground entrance to the mining operations at approximately MP 630, which is used daily for the movement of mining personnel and equipment.

89. The Murray Companies did not specify what impacts it expects at the underground entrance based on the construction or operation of the pipeline. While we recognize that the entrance is an integral part of the mining operation, we do not see any threats to the pipeline's integrity or conflicts with the Murray Companies' use of the entrance. Subsidence should not be a concern at the main entrance.

90. In its pleading, the Murray Companies clarify that mining operations could take place within three to seven years, rather than the five to 10-year time frame indicated by Rockies Express. We do not believe that this clarification alters the analysis or conclusion in the final EIS.

91. The Murray Companies assert that Rockies Express' proposals present numerous dangers to the pipeline's integrity and that construction of the pipeline will interfere with the ongoing and future extraction of hundreds of millions of tons of coal. The Murray Companies contend that if subsidence occurred and no precautions were taken, or if attempts at mitigation were inadequate, there would be a high likelihood of rupturing the pipeline. The Murray Companies also contend that Rockies Express' mitigation measures are not sufficient to protect the pipeline from severe ground stresses that are involved with coal mine subsidence.

⁵⁴ Longwall mining is a form of underground coal mining where a long wall of coal is mined in a single slice. The longwall mining technique involves the use of movable hydrolic roof supports, which make it possible to excavate blocks of coal up to 1,000 feet wide and 5,000 to 10,000 feet long.

92. Our review of the proposed pipeline segment between MPs 621 and 629 shows that a number of sensitive receptors exist in proximity to the proposed corridor. These include residences along Johnson Ridge Road between MPs 621 and 623, the community of Somerton, Ohio and associated residential development along State Route 800 at approximate MP 624.2, residences within 200 feet of the pipeline corridor at approximate MP 625.6, residences along Township Road 41 that are within 120 feet of the pipeline corridor at approximate MP 627, and an electric transmission line that parallels the pipeline corridor from approximate MP 627.2. If surface features present limitations for the advancement of underground mining operations into an area, we believe that the existing features mentioned above would offer as much of a limitation on mining as would the proposed pipeline facilities. As stated in the final EIS, mining applicants must provide notice to surface owners prior to the beginning of new mining operations. In addition, the ODNR, Division of Mineral Resources Management (DMRM), requires that underground mine applicants prepare a subsidence prevention or control plan. For mine applicants proposing longwall or pillar mining, the mining company must provide an inventory of land features and structures above the coal to be mined, including utility transmission lines. The DMRM determines if the mine applicant's plan is adequately designed to provide mine stability and prevent subsidence (room and pillar mining) or if the plan is designed to allow subsidence to occur in a predictable and controlled manner (longwall or pillar removal mining).

93. The final EIS includes mitigation (Environmental Condition 50) which requires Rockies Express to consult with the mining companies prior to the start of construction. Further, construction can not commence until the plans are reviewed and approved by the Director of OEP. Rockies Express developed measures to address the coal industry's concerns, including the use of Class 2 pipe in mining areas that are designed to better withstand stresses from ground subsidence, the installation of mainline valves that will automatically close in response to a sudden drop in pressure, the use of granular backfill around the pipe to reduce potential ground friction during a subsidence event, and potential re-routing of the pipe around specific topographic features such as steep hills. Rockies Express believes that its pipeline can be operated safely within the area regardless of the underground mining technique used and states that the timing and extent of ground subsidence associated with longwall mining can be accurately predicted. Rockies Express contends that this characteristic makes the risks posed by longwall mining significantly less severe than the risks posed by other underground mining techniques. However, as stated in the final EIS, Rockies Express may need to move the pipeline in the future to avoid damage from the mining activities. Rockies Express will be fully responsible for monitoring and inspecting of the pipeline, properly implementing mitigation measures, any repairs or relocation to the pipe that is determined necessary, and the costs associated with these activities. We conclude that Rockies Express' proposed measures are adequate to ensure safety and will not compromise longwall coal mining operations in the area.

94. In its April 4 and May 14, 2008 comment letters, the Murray Companies contend that the final EIS must consider an alternative route for the pipeline to avoid the known serious risk of coal mine subsidence and the associated environmental and safety hazards, including explosions and landslides. A general route alternative is proposed in the Weir International, Inc. report, which is included as an attachment to the Murray Companies April 4 filing.⁵⁵ The authors suggest that the REX-East pipeline could avoid most of the future planned mining areas by following a route that would approach the Clarington Hub from the south, although no specific alternative route is identified. Rockies Express states that it did not consider a route to the south of the Murray Companies' interests because a need to do so did not arise until March 2008 when the Murray Companies first indicated that they had reservations about the route. At that point, Rockies Express did consider a route further to the south.

95. Based on maps provided by the Murray Companies, Rockies Express believes that known mining rights extend approximately eight miles to the south of the proposed REX-East pipeline route and 13 miles to the north. Using the shorter southern re-route, Rockies Express would be required to add approximately 12 to 15 miles to the length of the pipeline. Based on the overall construction across Ohio, each mile of construction impacts about 23 acres of land. We estimate that an additional 12 to 15 miles of construction would generate additional impacts to between 277 to 346 acres of land, much of which is forested. Rockies Express estimates that the additional cost of construction would be approximately \$35 to \$43 million.

96. Based on the information in the record, we concluded that Rockies Express' proposed construction will occur through past and potentially future areas of mining. We also conclude that Rockies Express provided the framework for a subsidence mitigation plan, as recommended in the final EIS. Further, Rockies Express agreed to be responsible for the costs associated with monitoring or mitigation of the pipeline should mining advance in close proximity to the pipeline. Given these factors, we do not recommend an alternative southern route due to the additional impacts to forested and other areas and the additional costs that would be required to completely avoid the mining interests of the Murray Companies.

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

⁵⁵ Report on the REX-East Project and its Adverse Impact on Coal Reserves and Mining Plans of Murray Energy Corporation and Subsidiary Companies.

mining activities by the Murray Companies. If a plan cannot be developed, we will require that Rockies Express develop and file with the Secretary of the Commission (Secretary) an alternative route that avoids construction through the mining reserves of the Murray Companies.

4. Soils

98. Approximately 65 percent of the REX-East route will cross prime farmland soils. Rockies Express will use the AIMP and AIMA to minimize the impacts of the pipeline on these agricultural soils.

99. Soil compaction is also a concern in some areas, particularly those areas containing fine-grained, poorly-drained soils. To mitigate compaction in agricultural areas during wet weather, Environmental Condition 53 requires that prior to the start of construction, Rockies Express prepare an Agricultural Wet Weather Contingency Plan. In addition to erosion and compaction, mixing the topsoil with subsoil during construction could have negative impacts on soil resources. To reduce the likelihood of mixing topsoil with subsoil, we will require Rockies Express to implement topsoil segregation procedures as outlined in its Plan, AIMP, and AIMA.

5. Water Resources

a. Water Supply Wells and Springs

100. Surveys are ongoing for active wells and springs. Environmental Condition 54 requires that Rockies Express file the locations by milepost of all springs, seeps, and wells identified within 150 feet of construction work areas.

101. Rockies Express will minimize or avoid groundwater impacts during construction by implementing measures outlined in its Plan and Procedures. In addition, Environmental Condition 60 requires that Rockies Express file a report, within 30 days of placing the pipeline facilities in service, which identifies all water supply wells damaged by construction and how they were repaired. The Energy Policy Act of 2005⁵⁶ amended the Clean Water Act⁵⁷ to exempt gas pipelines from National Pollutant Discharge Elimination System permitting. The permitting authority passed to the state and the MODNR will permit the pipeline activity under section 644.026 of the Missouri Clean Water Law. Rockies Express will also be required to obtain a Missouri State Operating Permit.

⁵⁶ 109 Pub. Law 58, 119 Stat. 594 (2005).

⁵⁷ 33 U.S.C. §§ 1251-1387 (2000).

b. Wellhead Protection Areas

102. Hoosier Hills, which provides water for more than 35,000 people in Indiana, raised many concerns. Due to the shallow depth of its aquifer (10 to 30 feet below the ground's surface), we believe an inadvertent spill of hazardous materials could cause contamination within Hoosier Hills' wellhead protection area (WPA). Environmental Condition 57 requires that Rockies Express conduct water quality testing at Hoosier Hills' existing wells prior to, during, and for two years after construction to document any construction-related impacts on the WPA. Environmental Conditions 56 and 58 require that Rockies Express notify Hoosier Hills prior to construction between MPs 393 and 394 and develop a specialized spill plan that will reduce the likelihood of construction-related equipment impacting the Hoosier Hills WPA.

103. After the final EIS was issued, commenters raised concerns about contamination from construction activities (from pipeline or agricultural waste from surrounding fields), HDD impacts to the Whitewater River because of geology and potential drilling fluid or agricultural chemical pathways created to Hoosier Hills' and North Dearborn Water Corporation's (North Dearborn) WPAs, the potential for non-aqueous liquids within the pipeline to enter the aquifer, storage of hazardous materials only 400 feet from Hoosier Hills' and North Dearborn's WPAs, that mitigation plans are not adequate protection for the WPAs, and Rockies Express' lack of communication with applicable municipalities and state agencies.⁵⁸ We also received requests recommending the Indianapolis North 2 Alternative.

104. We believe implementation of Rockies Express' Spill Prevention, Control, and Countermeasure Plan (SPCC Plan) and Environmental Condition 56 will minimize the likelihood that construction-related spills will impact the Hoosier Hills and North Dearborn WPAs. Further, implementation of Rockies Express' Plan will require the segregation of topsoil during construction activities, minimizing the probability that agricultural waste (usually at the highest concentration in the topsoil layer) will enter the aquifer at a higher rate than prior to construction.

105. The HDD crossing of the Whitewater River (between approximately MPs 392.9 and 393.4) is expected to be at least 40 feet deep. This HDD crossing will be outside of the current five-year time of travel area for Hoosier Hills' wells, minimizing any potential impacts from an unanticipated release of drilling fluids or agricultural chemicals (from creation of a pathway) on the WPAs. In addition, Rockies Express indicated, through its geotechnical feasibility report, that it expected a successful HDD at this location. As

⁵⁸ We received comments from John O. Worth, Indiana State Senator Johnny Nugent, Indiana House of Representatives members Cleo Duncan and Robert Bischoff, and Dr. Noel C. Krothe.

previously explained, the Plan requires Rockies Express to segregate the topsoil, which reduces the likelihood that the pipeline will create a pathway for agricultural chemicals to enter the WPA.

106. Rockies Express must construct and maintain its pipeline in accordance with United States Department of Transportation (DOT) requirements (Title 49 C.F.R. Part 192). In accordance with these requirements, Rockies Express will routinely clean the internal portions of the pipeline to eliminate liquids from gathering.⁵⁹ We believe these measures will minimize or eliminate the likelihood that non-aqueous liquids will impact any aquifers in the project area.

107. Commenters were concerned about Rockies Express' commitment to maintain only a 400 foot buffer when refueling and the potential impacts from a spill within the Hoosier Hills WPA. Environmental Condition 56 minimizes the likelihood that a construction-related spill will impact the Hoosier Hills or North Dearborn WPAs.

108. The final EIS examined the Indianapolis North 2 Alternative.⁶⁰ This alternative would not impact Hoosier Hills' or the North Dearborn's WPAs. It would be adjacent to existing rights-of-way and would cross more cultivated lands. This alternative would also be within 50 feet of at least 220 more homes than the proposed route, be about 30 miles longer than the proposed route, but have fewer waterbody crossings (13) and forested land impacts than the proposed route. We do not believe this alternative would be preferable to the proposed route because it is closer to more homes and longer than the proposed route.

109. A commenter was concerned about Rockies Express' lack of communication with applicable agencies for WPAs. While Rockies Express has corresponded with many of the WPAs, we agree with the commenter's concerns. Thus, Environmental Condition 59 requires that Rockies Express file with the Secretary, prior to construction, documentation of consultations with applicable local and state agencies regarding construction in areas with WPAs or other groundwater management areas crossed by the pipeline.

110. Hoosier Hills contends that the final EIS did not recognize impacts on groundwater from operation of the REX-East project. Hoosier Hills, however, does not specify what potential operational impacts the project could have on groundwater. The final EIS found that no long-term impacts are anticipated as a result of operation the REX-East pipeline.

⁵⁹ Page 4-29 of the final EIS.

⁶⁰ Pages 3-17 through 3-21 of the final EIS.

111. Hoosier Hills correctly points out that Rockies Express' HDD Contingency and Frac-Out Plan has no provisions to remove spills. However, Rockies Express' SPCC Plan does contain these measures. Properly implemented, this SPCC Plan will minimize the likelihood of a spill and, should such a spill occur, the SPCC Plan will ensure the prompt cleanup of the spill to minimize or eliminate the likelihood of impacts on groundwater. Further, in accordance with Environmental Condition 56, Rockies Express must develop a site-specific specialized spill plan to reduce the likelihood of a spill impacting Hoosier Hills' or North Dearborn's WPAs.

112. Hoosier Hills asserts that Rockies Express submitted documentation for the wrong part of the Whitewater River, rather than the proposed drilling site. The documentation contained an incorrect milepost. The geological tests, however, were in the locations that Rockies Express proposes to conduct its drilling activities.

113. Contrary to Hoosier Hills' concerns, construction according to Rockies Express' Plan will prevent the pipeline from acting as a French drain (trench breakers will be installed to prevent water from flowing along the pipeline). If the HDD technique is not feasible for crossing the Whitewater River, we will require Rockies Express to obtain a revised crossing permit from the IDNR.

114. Hoosier Hills contends that the final EIS erred in concluding that construction would only contact the uppermost reaches of the WPA. Construction through the five-year time-of-travel area from Hoosier Hills' WPA will generally be less than 10 feet from the ground's surface. Because the shallow aquifer is between 10 and 30 feet below the ground's surface to the top of the aquifer, we believe the final EIS is accurate.

115. The final EIS calculated the distance of the HDD to the current one and five-year time-of-travel area based on features provided in Exhibit 1 of Hoosier Hills' January 12, 2008 filing. Hoosier Hills contends that its WPA time-of-travel area will be expanding, but it does not state the new dimensions of the WPA expansion nor does it state what the new calculated distance would be between the HDD activity and the WPA expansion. The final EIS discussed the turbidity of the groundwater that would be associated with a possible frac-out during implementation of the HDD. The final EIS concluded that while turbidity of the Whitewater River and the associated aquifer may be possible from a frac-out, impacts on Hoosier Hills will be negligible. We believe a successful HDD will not result in adverse impacts to Hoosier Hills. Further, we agree with the conclusion in the final EIS that if a frac-out were to occur, impacts would be negligible because of the distance that must be traveled and the subsequent settling of the clay before entering Hoosier Hills' pumps.

116. The final EIS did not specifically address fecal coliforms (e.g., cow pastures and manure used as fertilizer) entering the groundwater as a result of construction across agricultural areas. The final EIS, however, addressed agricultural chemicals and impacts. Because these chemicals and fecal coliforms will be of greatest concentration in the

topsoil layer, Rockies Express' commitment to segregate topsoil in agricultural areas, including cow pastures, will limit agricultural chemicals, as well as fecal coliforms, from entering the groundwater. Further, given the sandy nature of the soil above Hoosier Hills' WPA, it is likely that concentrations would be similar to adjacent areas during and post construction.

117. Hoosier Hills questions the final EIS' conclusion that Hoosier Hills' wells would be safe from mechanical or functional disruption, since the wells are more than 350 feet from the proposed pipeline. Typically, our staff requests information on all wells within 150 feet of a proposed project. Generally, we believe that the mechanics of wells greater than 150 feet from a proposed project will not be impacted. Here, Hoosier Hills' wells are not within the survey corridor of 350 feet. However, to ensure that water quality and flow rates are not impacted as a result of construction, Environmental Condition 57 requires that Rockies Express develop a water quality testing plan in consultation with Hoosier Hills. The monitoring will occur for two years after completion of construction.

118. Hoosier Hills contends that Rockies Express did not suffer any consequences due to its failure to file site-specific HDD plans by the end of the draft EIS comment period. Because Rockies Express has not yet filed all of these plans, Environmental Condition 62 requires Rockies Express to file the plans prior to construction of the drill pad or engaging in any drilling activities.

119. Hoosier Hills asserts that the increased monitoring costs would be incurred by its customers. We believe that our condition that Rockies Express must conduct water quality testing for two years will reduce or eliminate the need for continued testing, if no changes in water quality occur.

120. As to Hoosier Hills' concerns about hazardous liquids, Rockies Express developed their SPCC Plan to address the potential impacts and mitigation measures if an inadvertent spill of hazardous materials were to occur during construction. This plan restricts refueling or other liquid transfers to specific areas and provides additional precautions when specified setbacks cannot be maintained.

121. For these reasons, we concur with the final EIS and conclude that implementation of Rockies Express' Plan, SPCC Plan, and our mitigation measures will minimize, to the extent practicable, any impacts as a result of this project on Hoosier Hills' and North Dearborn's WPAs.

122. We received comments on the draft EIS about the possibility of the pipeline's coating impacting water supplies, especially the heat from the pipeline. Rockies Express will use a non-toxic epoxy material for the coating of the proposed pipeline. Because this material is considered non-toxic, no contaminant-associated impacts on drinking water supply areas or other waterbodies are expected. Further, Rockies Express' tariff limits gas temperatures to 120 degrees Fahrenheit, which is identical to other interstate natural

gas pipelines. These temperatures will not exceed the melting point of the pipeline coating.

123. Commenters also expressed concern regarding contaminants from inside the pipeline leaching into the groundwater. Rockies Express will maintain its pipeline facilities in accordance with the federal safety standards administered by DOT's Pipeline and Hazardous Materials Safety Administration. Consistent with those existing standards, the pipeline will be routinely cleaned internally by pigs to eliminate any liquids from gathering in the pipeline. During pigging operations, the pig receivers, typically collocated with other above-ground facilities (i.e., compressor stations and meter stations), will be equipped to contain any liquids gathered by the cleaning process.

c. Surface Water Resources

124. One commenter expressed concern with how the pipeline will affect the water supply from the Barnesville Reservoir. The pipeline will be more than three miles from the reservoir. There are highways, hills, and forests between the reservoir and the pipeline. We do not believe that the pipeline will have any impact on the reservoir.

125. The REX-East project will cross 1,485 surface waters in the Upper Mississippi Regional Watershed and the Ohio Regional Watershed. The facilities will cross 59 waterbodies designated as sensitive by state agencies because of significant fisheries resources. Crossing methods proposed for these waterbodies include dry open-cut crossings, dam-and-pump/flume, and HDD.

126. One commenter expressed concern that placing the pipeline under the Whitewater River in Indiana could increase the erosion which occurs during river flooding. The commenter contends that the river is known to wash out the banks and scour to a depth of four feet. Rockies Express will cross the Whitewater River via an HDD. The pipeline will be installed at a depth of about 50 feet below the bed of the river. The drill and exit sites will be set back about 500 feet from the river banks. We do not believe that construction of the pipeline in this area will increase the erosion or scouring caused by flooding of the Whitewater River. We also do not believe that scouring will affect the pipeline.

127. Consultations with the organizations or individuals who withdraw potable water within three miles of the proposed open-cut crossings of the Flatrock River in Indiana and the Somerset Creek in Ohio have not been completed. The City of Louisiana, Missouri expressed concern regarding water withdrawal along the proposed pipeline route. Environmental Condition 61 requires that Rockies Express file with the Secretary documentation of finalized consultation with these organizations or individuals prior to the start of construction.

128. Rockies Express may need to blast in or adjacent to 53 perennial waterbodies along the right-of-way. In accordance with its Blasting Plan, Rockies Express will notify nearby landowners at least 48 hours prior to the initiation of blasting activities.

129. Rockies Express proposes to conduct 21 HDD crossings of 32 waterbodies. Rockies Express was denied survey permission at the Embarras River (MP 202.9) and the Muskingum River (MP 577.2). Environmental Condition 62 requires that the results of the HDD geotechnical feasibility investigations, site-specific construction diagrams, and contingency plans for the Embarras and Muskingum Rivers' HDD locations must be filed prior to the start of construction. Rockies Express developed an HDD Contingency and Frac-Out Plan, which includes containment measures should an inadvertent release of drilling mud occur.

130. REX-East will cross several waterbodies that are considered sensitive or unique. Agency consultations and surveys of these waterbodies are ongoing. Environmental Condition 64 requires that Rockies Express file revised site-specific restoration and mitigation measures applicable to each sensitive crossing. Rex-East will cross eight sensitive perennial waterbodies that are listed on the National Rivers Inventory (NRI). Rockies Express proposes to cross all NRI waterbodies by the HDD method with the exception of the White River and Paint Creek, which will be crossed by dry-ditch crossing methods.

131. Rex-East will cross two designated Wild and Scenic Rivers: the Little Miami River and Big Darby Creek. The National Park Service (NPS), which has jurisdiction over these waterbodies, indicated that an open-trench method (including dam and pump and fluming) are not acceptable. Rockies Express proposes to cross these waterbodies by HDD or microtunneling methods. However, there is concern that these methods may not be successful due to geologic features at these locations. In order to provide the option of avoiding the waterbodies, Environmental Conditions 66 and 67 require that Rockies Express successfully complete the HDD or microtunnel crossing of the Little Miami River prior to constructing between MPs 432.0 and 467.2 and successfully complete the HDD or microtunnel crossing of the Big Darby Creek prior to constructing between MPs 494.1 and 533.9. To further limit impacts on the Little Miami River and Big Darby Creek, Rockies Express agreed to cross all tributaries to these waterbodies by using dry-ditch construction methods.

d. Hydrostatic Testing

132. Rockies Express will verify the integrity of its pipeline before placing it into service by conducting a series of hydrostatic tests that include filling the pipeline with water, pressurizing it, and checking for pressure losses due to pipeline leakage. Hoosier Hills expressed concern that the hydrostatic test water discharge to the Whitewater River may contaminate the Hoosier Hills WPA. Environmental Condition 69 requires Rockies Express to provide Hoosier Hills a copy of the hydrostatic test analysis prior to discharge

to the Whitewater River. The MODNR asked that Rockies Express provide a list of water sources to be used for hydrostatic testing and the volumes that will be drawn from each source, prior to construction.

e. Wetlands

133. The REX-East route will cross approximately 4.3 miles of wetlands. Construction of the pipeline will affect approximately 37.8 acres of wetlands, including 7.1 acres in Missouri, 6.8 acres in Illinois, 6.8 acres in Indiana, and 17.1 acres in Ohio. No wetlands will be affected by the proposed facilities in Nebraska and Wyoming.

134. Two sensitive wetlands in Missouri are between the Salt River and the Mississippi River and are part of Blackburn Island. The FWS recommended that these wetlands be mitigated near or adjacent to the Ted Shanks State Conservation Area in order to support ongoing conservation and restoration efforts. Environmental Condition 71 requires Rockies Express to develop a wetland restoration plan for Blackburn Island in consultation with the COE, FWS, and MODNR.

6. Vegetation

135. Construction of the REX-East pipeline will affect agricultural, forested, and herbaceous vegetation. During construction, the pipeline route will cross 490.6 miles (11,131.3 acres) of agriculture and herbaceous open land and 143.5 miles (3,095.8 acres) of forested areas. The primary impacts on vegetation from construction will be the cutting, clearing, and removal of existing vegetation within the construction work area.

136. The majority of construction-related impacts will be temporary. The clearing of upland forest will result in long-term impacts, as upland forest can take more than 50 years to return to pre-construction conditions. The pipeline will cross areas of contiguous forest in Missouri, Illinois, Indiana, and Ohio. The loss of vegetation in contiguous forest lands may cause loss of wildlife habitat due to vegetation conversion. The FWS is concerned with the loss of forested vegetation and the loss of wildlife, including migratory birds that depend on it. Environmental Condition 83 requires Rockies Express to comply with the Conservation Guidelines developed in consultation with the FWS to minimize forest impacts and forest fragmentation impacts to migratory birds.

137. To minimize impacts on forested areas, Environmental Condition 74 requires Rockies Express to limit tree clearing between HDD entry and exit workspaces to minor brush clearing that is less than three-feet-wide using hand tools.

138. The REX-East pipeline will cross vegetation communities of special concern in Indiana and Conservation Reserve Program (CRP) lands in Missouri, Illinois, Indiana, and Ohio. Construction will temporarily disturb approximately 51.8 acres of classified forests in Indiana. The proposed pipeline will cross a classified forest starting at

approximately MP 331.9 in Johnson County, Indiana. The draft EIS considered a route variation, but it was determined that this variation (the Ballard Variation) would not avoid or minimize impacts to the classified forest. Environmental Condition 76 requires Rockies Express to file a site-specific construction plan that uses a 75-foot right-of-way within this classified forest and provides justification for any temporary workspace that requires the removal of trees. In addition, Environmental Condition 77 requires that Rockies Express develop a Compensatory Mitigation Plan for classified forests in consultation with classified forest landowners and appropriate agencies.

139. To date, 24 tracts of CRP lands have been identified along the pipeline route in Missouri. The Farm Services Administration identified landowners with CRP land in all counties except for Belmont and Monroe Counties, Ohio. Environmental Condition 79 requires that Rockies Express consult with the landowners to identify affected CRP lands and mitigation measures to protect these lands.

140. Rockies Express developed a Weed Management Plan based on the recommendations of various agencies to minimize the spread of noxious weeds with preventative measures and treatment methods. To further limit the introduction of noxious weeds, Environmental Condition 80 requires that Rockies Express only use certified weed-free straw or hay during construction.

141. We believe impacts to herbaceous vegetation generally will be temporary or short-term and not significant. Impacts to tracts of forest and potential fragmentation will result in long-term and limited permanent impacts, which are considered significant. However, implementation of Rockies Express' Plan, the Conservation Guidelines, and the environmental conditions herein, will ensure that impacts on forest tracts are adequately minimized or mitigated to acceptable levels.

7. Wildlife

142. The predominant wildlife habitats in the REX-East project area are open water, agricultural lands, forested lands, herbaceous upland, herbaceous wetland, and developed areas. The impact on wildlife species, including game species and their habitats, will vary depending on the requirements of each species and the existing habitat present along the route. The clearing of right-of-way vegetation will reduce cover, nesting, and foraging habitat for some wildlife. The degree of impact will depend on the type of habitat affected and the rate at which vegetation regenerates after construction. To minimize impacts on wildlife habitat, Environmental Condition 81 requires Rockies Express to consult with each state's applicable comprehensive conservation strategy coordinator to verify compliance with each state's Comprehensive Wildlife Conservation Strategy to the extent practicable.

143. The bald eagle is known to nest in the project area. Rockies Express agreed to implement the National Bald Eagle Management Guidelines for the protection of bald

eagles. To further minimize impacts to the species, Environmental Condition 82 requires that Rockies Express file documentation of consultations with the FWS to determine the need for bald eagle surveys. In addition, although all forested areas along the right-of-way could be used as breeding sites by migratory birds, the FWS identified multiple wooded locations where the pipeline is not collocated and where the presence of Birds of Conservation Concern is probable. As previously mentioned, Environmental Condition 83 requires Rockies Express to comply with the Conservation Guidelines developed in consultation with the FWS to address impacts to forested lands, including fragmentation.

144. The proposed pipeline will cross 11 areas considered to be significant or sensitive wildlife habitats in Missouri and Ohio. We believe that the REX-East project will not significantly impact wildlife habitat in these managed and sensitive wildlife areas if Rockies Express follows existing corridors where practicable, uses HDD methods, and implements its Plan and Procedures, AIMP, AIMA, Weed Management Plan, Blasting Plan, and the environmental conditions herein. In forested areas, the proposed mitigation and environmental conditions herein will ensure that impacts on these tracts are adequately minimized or mitigated to acceptable levels.

8. Fisheries

145. All waterbodies affected by the proposals have been classified as warm water fisheries. Of the 1,485 waterbody crossings, 59 will involve fisheries of special concern. No essential fish habitat, as defined by the Magnuson-Stevens Fishery Conservation and Management Act,⁶¹ will be affected.

146. Construction could result in several impacts on fisheries resources, including increased stress due to changes in water quality, decreased habitat and habitat value, loss of shading, and the likelihood of stream bank erosion. Overall, these impacts will be minor due to the relatively small area of the waterbody that will be affected.

147. The season in which construction takes place could influence the degree of impacts associated with in-stream activities. Because construction during periods of sensitive fish activity (i.e., spawning and migration) could have a greater impact than construction during other periods, several agencies recommended construction timing restrictions designed to minimize impacts on fisheries. Environmental Condition 85 requires Rockies Express to comply with the waterbody crossing time windows established by the Illinois Department of Natural Resources (ILDNR) (no construction activities from March 1 to June 30); the INDNR (no construction activities, including installation of bridges requiring in-stream support between April 1 and June 30); and the

⁶¹ 16 U.S.C. § 1802(10) (2000).

Ohio Public Service Board (no construction activities between April 15 and June 30), unless provided with written approval from the appropriate state agency.

148. Rockies Express proposes to use open-cut methods for a majority of the waterbody crossings. The dam-and-pump/flume crossings method could also be used to cross waterbodies. Rockies Express proposes to cross 32 waterbodies using the HDD method. A successful HDD would avoid direct impacts on the waterbody and aquatic resources.

149. Rockies Express may require blasting activities at 54 locations in or adjacent to perennial waterbodies along the right-of-way. In-stream blasting could injure or kill aquatic organisms close to blasting activities. Rockies Express will adhere to its site-specific Blasting Specifications Plan and will file a blasting schedule before beginning any construction where blasting will be required within each waterbody greater than 10 feet wide.

150. The intake of hydrostatic test water could cause the loss of aquatic organisms, including fish and shellfish. However, impacts on fisheries from hydrostatic test water intake will be limited by Rockies Express' adhering to its Plan and Procedures.

151. The pipeline will cross 59 fisheries of special concern, including one waterbody on the border of Missouri and Illinois, one in Illinois, eight in Indiana, and 49 in Ohio. Environmental Condition 86 requires that Rockies Express use a dry technique to cross fisheries of special concern with a wetted width less than 30 feet.

9. Special Status Species

152. Ten federally listed threatened or endangered species (Indiana bat; whooping crane; clubshell, fanshell, fat pocketbook, and northern riffleshell mussels; decurrent false aster; eastern prairie fringed orchard; prairie bush clover; and running buffalo clover) and three candidate species (eastern massasauga, rayed bean mussel, and spectaclecase mussel) for federal listing could occur in the project area.

153. On March 25, 2008, we issued the Biological Assessment (BA) for the REX-East project and provided it to the FWS for its review and concurrence. Based on our analysis of the BA, the final EIS determined that the proposed project will have *no effect* on four of the 10 federally listed threatened or endangered species (clubshell mussel, decurrent false aster, eastern prairie fringed orchid, and the prairie bush clover). The final EIS determined that with the implementation of Rockies Express' proposed mitigation measures and our recommended mitigation measures, the project *may affect, but would not likely adversely affect*, the remaining six federally listed threatened or endangered species (whooping crane; Indiana bat; fanshell, fat pocketbook, and northern riffleshell mussels; and the running buffalo clover). In a letter dated April 24, 2008, the FWS concurred with our determinations of effect for this project.

154. Although the consultation is complete, additional pre-construction surveys and mitigation are necessary for those tracts of land with potential habitats where Rockies Express was denied access. Environmental Conditions 87 through 98 set out additional requirements to protect the Indiana bat. We will require Rockies Express to conduct additional pre-construction surveys for the Indiana bat, running buffalo clover, and fanshell, fat pocketbook, and northern riffleshell mussels prior to the start of construction. A complete discussion of impacts to, and mitigation for, federally listed species can be found in the BA and in section 4.7 of the final EIS.

155. A commenter expressed concern about the determination of effect conclusion reached in the final EIS for the Indiana bat, which differed from the determination in the draft EIS. The determination of effect for the Indiana bat in the final EIS stated that the project “would be not likely to adversely affect the Indiana bat.” The determination of effect in the draft EIS stated “that the project is likely to adversely affect the Indiana bat.”

156. Between the draft and final EISs, and as presented in the BA, Rockies Express proposed mitigation for the Indiana bats which will limit construction in the vicinity of roost trees. Specifically, Rockies Express proposed to put timing restrictions on tree clearing and to replant trees in forested areas cleared for construction. In addition, staff recommended additional mitigation, developed in consultation with the FWS, to further reduce impacts to the Indiana bats. Because of these measures, our determination of effect was changed. In addition, as stated above, the FWS concurred with our determinations of effect.

157. Transient whooping cranes may occur in the project area. In order to prevent accidental injury, Environmental Condition 99 requires Rockies Express to stop work in the area if a whooping crane is spotted.

158. Rockies Express conducted surveys for federally listed mussels in 2007. No federally listed mussels were found. However, waterbodies in Ohio were not surveyed. In addition, hydrostatic testing of the pipeline could adversely affect mussels or glochidia/host fish or juveniles. Rockies Express will use intake screens to limit the entrainment of fish. These screens, however, may not adequately protect mussel species. Environmental Conditions 100 through 103 require additional mitigation to protect federally listed mussels.

159. Surveys were not required by the FWS, or have been completed, for the decurrent false aster, the eastern prairie fringed orchid, and prairie bush clover. Surveys have not been completed for the running buffalo clover. To minimize the potential impacts on the running buffalo clover, Environmental Condition 104 requires that Rockies Express file complete survey reports for the running buffalo clover and documentation of its consultation with the FWS prior to the start of construction.

160. Survey reports for two potential habitat sites for the federal candidate eastern massasauga snake are pending. Once access is granted, Rockies Express will complete the surveys and submit the results to the ODNR and FWS. Given the results of the report titled “Report of Assessment of Potential Habitat for the Eastern Massasauga and Eastern Hellbender” and Rockies Express’ commitment to complete the surveys once access is granted, we believe that it is unlikely that there will be an adverse impact on this federal candidate species. In addition, because the rayed bean and spectaclecase mussels have not been found in any of the completed surveys and Rockies Express will complete all surveys prior to the start of construction and will file the results with the Secretary and the FWS for review and comment, we believe that it is unlikely that there will be an adverse impact on these federal candidate species.

161. The Natural Heritage Databases of Missouri, Illinois, Indiana, and Ohio, as well as consultation with the ODNR, identified 31 state-listed threatened or endangered species that may occur in the project area. Sixteen were eliminated because they are transient in the area, are unlikely to adversely respond to temporary and permanent impacts associated with the proposed facilities, or were determined after the initial review, in consultation with the agencies, to probably not occur in the area. Rockies Express continues to consult with the state agencies with regard to minimizing impacts on state-listed and special status species. In response to concerns identified by the ODNR and INDNR, Environmental Condition 68 does not allow Rockies Express to withdraw hydrostatic test water from the Little Miami River or its tributaries to reduce impacts on the snuffbox, long-solid, fawnsfoot, washboard, and sharp-ridged mussels.

10. Land Use and Visual Resources

162. Construction of the project will affect approximately 14,334.4 acres of land including 9,678.5 acres for the pipeline construction right-of-way, 153.0 acres for the above-ground facilities (including access roads), 36.7 acres for interconnects and laterals, and 4,466.2 acres for additional temporary workspaces and pipe storage and contractor yards. Agricultural land comprises approximately 72 percent of the project area and forest land comprises approximately 23 percent. Commercial/industrial land, open water, open land, and residential land account for the remaining five percent. During operation, the permanent pipeline right-of-way will consist of approximately 3,871.8 acres and the above-ground facility sites and permanent access roads will permanently convert about 153.0 acres to commercial/industrial use.

163. The project will impact approximately 10,692.6 acres of agricultural land during construction. Based on consultation with federal and state agencies, as well as comments from landowners, we identified five areas of primary concern: drain tile repair, pipeline depth of cover, topsoil segregation, working in wet fields, and landowners having the ability to negotiate for other or additional mitigation. Rockies Express developed an AIMP (and a AIMA in Illinois) to address these areas of concern and other potential impacts to agricultural lands. However, we believe the AIMP and AIMA do not fully

address the issues mentioned above. Several environmental conditions are included herein to ensure that agricultural lands, and the respective property owners, are minimally impacted. Environmental Condition 105 requires Rockies Express to extend its proposed post-construction monitoring period to cover the five years following construction activities. Environmental Condition 106 requires additional agricultural monitors for Spreads 1 through 5 to ensure adequate coverage. As previously mentioned, we are requiring Rockies Express to bury the pipeline to a depth of five feet in agricultural areas to minimize damage to drain tiles. In addition, because some landowners may have already signed agreements without knowing these requirements, Environmental Condition 110 requires that Rockies Express give landowners the opportunity to request five feet of cover. We have also included Environmental Condition 111 to protect horse farms and Environmental Condition 112 to reduce tree cutting on a property with a maple syrup operation

164. Rockies Express identified 66 residences and 18 non-residential structures within 50 feet of the construction right-of-way. The final EIS developed route variations to avoid four residences that were originally within the proposed permanent right-of-way. There are 18 residences within 25 feet of a proposed work area and three are within 10 feet of the proposed work area. Because of the proximity to construction activities, Environmental Condition 114 requires Rockies Express to undertake measures to mitigate construction impacts on these residences. Many of the residences along the route are on septic systems. Damage to these systems will have a significant impact on the residents. Environmental Condition 115 requires Rockies Express to identify all septic systems prior to construction and present each landowner with a septic system contingency plan.

165. A resident was concerned that construction activities near the Chester Township Fire Department in Ohio could affect emergency services. Environmental Condition 113 requires that Rockies Express develop a plan to maintain safe egress for emergency vehicles during construction.

166. The Ohio Power Siting Board was concerned that construction equipment operating in the vicinity of the Fairfield County Airport may interfere with the airport's operations. Environmental Condition 116 requires Rockies Express to consult with Federal Aviation Administration and the Ohio Department of Transportation, Office of Aviation, about these concerns.

167. The proposed pipeline will affect 34 recreational and special interest areas, including the Little Miami River and Big Darby Creek, which are under the jurisdiction of the NPS; Blackburn Island, Caesar's Creek State Park, Deer Creek State Park, and Cecil M. Harden Lake which are COE properties; the Sny Levee, several scenic by-ways, various rivers which are listed as having significant habitat and/or recreational values; recreational trails; state forests and parks; Raven Rocks; White Oak Exotic Hunting Preserve; and Camp Woodsmoke. To date, Rockies Express has not provided site-

specific crossing plans for many of these sites. In other cases, the final EIS found Rockies Express' draft plans to be incomplete. Environmental Conditions 117 through 127 require that Rockies Express provide or revise these plans and/or file feasibility studies, safety mitigation (which includes maintaining access) and portage plans, restoration plans, timing considerations, and consultation with the landowner/manager for these recreation and special-use areas.

11. Socioeconomics

168. Construction will have a minor, temporary impact on local transportation and provide minor, temporary stimulatory increases to local populations, housing, employment, and taxes. Operation of the proposed facilities, which would permanently employ 20 full-time equivalents, will have a negligible effect on local spending and employment. Rockies Express will pay local taxes, in the form of ad valorem (property) taxes, annually to counties crossed by the project.

12. Cultural Resources

169. Rockies Express consulted with the Wyoming, Nebraska, Missouri, Illinois, Indiana, and Ohio State Historic Preservation Offices (SHPO) and performed cultural resource investigations for areas that will be affected by construction and operation of the project. Cultural resource surveys are ongoing and the consultation process is not yet complete. Environmental Conditions 128 through 141 will not allow construction until Rockies Express completes the required studies and we have received SHPO comments on the studies.

170. To date, cultural resources surveys in Missouri identified 93 archaeological sites and architectural resources. Forty-five of these sites have been recommended as potentially eligible for listing on the National Register of Historic Places (NRHP). In Illinois, the cultural resources surveys identified 481 archaeological sites and architectural resources and 64 of these sites were recommended as potentially eligible for the NRHP. In Indiana, the cultural resources surveys identified 857 archaeological and architectural resources and 58 were recommended as potentially eligible for listing on the NRHP. In Ohio, the cultural resources surveys identified 639 archaeological and architectural resources and 72 are being treated as potentially eligible. In Nebraska, no cultural resources were identified at the compressor station site. One archaeology site was identified at the compressor station site in Wyoming, but the site is not eligible for the NRHP. Human remains were found by the pipeline route in Missouri and Illinois. Environmental Conditions 128 through 132 and 134 require avoidance or extra protection in areas with the potential to contain human remains.

171. Rockies Express prepared its Plans for the Unanticipated Discovery of Historic Properties and Human Remains to be used in the event that any unanticipated historic

properties (consisting of pre-historic or historic archaeological resources) or human remains are encountered during construction.

172. Rockies Express contacted 43 Native American tribes with cultural links to the project area and 22 tribes responded. Two tribes asked to participate in the consultation process and 17 tribes asked to be notified if human remains were found.

173. We will ensure that treatment is carried out according to the terms of the Memorandums of Agreement between each state's SHPO (Missouri, Illinois, Indiana, or Ohio), Rockies Express, and the Commission before construction is allowed in any area where a historic property will be affected.

174. Mr. John Forman, who owns the Hunt-Forman Farm, requested that he be considered a "consulting party" in the National Historic Preservation Act section 106⁶² process as it relates to his property. The Hunt-Forman Farm is affected by the proposed pipeline and is listed on the NRHP.

175. The implementing regulations for the National Historic Preservation Act provide that "[c]ertain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties."⁶³ We considered Mr. Forman's request and will grant him "consulting party" status for the portion of the project that affects the Hunt-Forman Farm property.⁶⁴

176. Mr. Forman also asked that we identify the "FERC agency official responsible for section 106 compliance per 36 C.F.R. § 800.2(a)" for the REX-East project. That official is J. Mark Robinson, Director of the Office of Energy Projects.

⁶² 16 U.S.C. § 470f (2000).

⁶³ 36 C.F.R. § 800.2(c)(5) (2007).

⁶⁴ As a consulting party, we will notify Mr. Forman of the project and invite him to submit his views. If we make a finding of no adverse impact, Mr. Forman will be notified and provided with supporting documentation. If Mr. Forman disagrees with our decision, he will have 30 days to notify the Commission in writing and we will continue to consult with him or request that the Advisory Council on Historic Preservation review the findings. In the case of a finding of adverse impact, we will continue consultation with Mr. Forman to develop and evaluate alternatives or modifications that could avoid, minimize, or mitigate adverse impacts.

177. Finally, Mr. Forman inquired whether or not we are planning to use alternate procedures pursuant to 36 C.F.R. § 800.14. The regulations allow agencies to develop procedures for the implementation of section 106 as long as they are consistent with, and approved by, the Advisory Council on Historic Preservation. The Commission, however, has not developed our own procedures. We follow the procedures described in 36 C.F.R. 800.

13. Air Quality and Noise

178. Air quality impacts associated with construction will include emissions from fossil-fueled construction equipment and fugitive dust. However, such air quality impacts will generally be temporary and localized and are not expected to cause or contribute to a violation of applicable air quality standards. Rockies Express indicated it will require its contractors to use their best available non-road construction equipment in their fleets in the non-attainment areas. However, we believe this statement is insufficient to demonstrate that General Conformity Thresholds will not be exceeded. Thus, Environmental Condition 142 requires Rockies Express file an implementation plan of the measures it will use to demonstrate compliance with the ratios of projected construction equipment emission technology, prior to the start of construction. Also, any burning of vegetation must conform to state regulations regarding distance from residences and incorporated areas and, if necessary, the proper permits need to be obtained.

179. The proposed Arlington, Bertrand, Mexico, Blue Mound, Bainbridge, Hamilton, and Chandlersville Compressor Stations will emit air pollutants as a result of combustion of natural gas to drive the compressor units and associated equipment. However, screening analyses of these stations indicate air emissions associated with operation of these facilities will meet federal and state ambient air quality standards.

180. Impacts to noise levels will generally be temporary, minor, and limited to daylight hours, except at HDD sites where drilling and related construction equipment will likely operate on a continuous basis for up to several weeks. As a result of this continual operation, noise levels at 11 of evaluated HDD sites could be significantly increased at nearby NSAs. To minimize this potential increase in noise levels and the resulting impacts to nearby NSAs, Rockies Express committed to using a temporary noise barrier at least 16 feet high along with other noise mitigation measures. With these mitigation measures, noise impacts due to HDD activities will not be significant. Environmental Condition 143 requires Rockies Express to provide site-specific plans for the use of the mitigation measures at the HDD sites and file the appropriate noise analyses for any HDD sites that were not evaluated in the final EIS.

181. The proposed compressor stations will generate noise on a continuous basis during operation. However, the predicted noise levels attributable to operation of the proposed compressor stations should not result in significant impacts on the NSAs nearest to those

facilities. To ensure that actual noise levels resulting from the operation of the stations will not exceed significant levels, Environmental Condition 145 requires that Rockies Express file post-construction noise survey reports for all compressor stations.

14. Reliability and Safety

182. The project will be designed, constructed, operated, and maintained to meet or exceed all DOT safety standards for natural gas pipelines. Following construction, Rockies Express will also initiate a pipeline integrity management plan to ensure public safety during operation. The proposals will result in only a slight increase in risk to the nearby public.

183. Rockies Express agreed with the Sny Levee District to install the pipeline over the top of the Sny Levee on the eastern bank of the Mississippi River. The pipeline will be constructed using conventional methods in accordance with Rockies Express' Plan, as well as additional measures to protect the integrity of the levee. This installation may cause settling of the levee. Environmental Condition 146 requires Rockies Express to file the results of their levee settlement monitoring every six months for a period of five years after installation.

184. Hoosier Hills contends that the Whitewater River is an "identified site," as that term is defined in 49 C.F.R. section 192.903(4)(a). Hoosier Hills asserts that this classifies the river crossing as a High Consequence Area. If the pipe for the river crossing is Class 1, Rockies Express' waiver from the DOT for operating the pipeline at a higher pressure will be applicable. If the pipeline is in a High Consequence Area, however, the DOT will mandate a thicker-gauge pipe.

15. Environmental Protection Agency Letter

185. The United States Environmental Protection Agency (EPA) filed comments, contending that many of the information requests and mitigation plans that the final EIS required to be filed prior to the start of construction be completed by Rockies Express prior to the issuance of the order in this proceeding. Specifically, prior to the issuance of the order, the EPA recommends that Rockies Express finalize consultations with the COE, FWS, and other agencies to develop a Wetland Mitigation Plan and an Upland Forest Mitigation Plan. In addition, prior to the issuance of the order, the EPA recommends that Rockies Express develop a site-specific spill plan (Environmental Condition 56) and a water quality testing plan (Environmental Condition 57) for construction in Hoosier Hills' WPA; develop a site-specific wetland restoration plan for Blackburn Island in consultation with the COE (Environmental Condition 71); consult with the COE, FWS, and other agencies about replanting, monitoring, and managing reforestation in forested wetlands (Environmental Condition 72); and develop a plan to monitor compliance with the Tier 2 and 3 emissions in the Indianapolis, Indiana and the

Cincinnati-Hamilton, Ohio-Kentucky-Indiana non-attainment areas (Environmental Condition 142).

186. The EPA also recommends that prior to the issuance of the order, Rockies Express “commit” that it will notify Hoosier Hills 48 hours prior to the start of construction; provide Hoosier Hills a copy of the hydrostatic test water analysis prior to discharge in the White River; document its consultations with local and state agencies in areas with WPAs; file a report identifying all water supply wells/systems damaged during construction; and prepare site-specific blasting plans for each wetland with shallow bedrock.

187. With respect to EPA’s comment regarding the provision of a Wetland Mitigation Plan and a comprehensive Upland Forest Mitigation Plan prior to the issuance of the order in this proceeding, we note that the COE is responsible for the protection of wetlands under section 404 of the Clean Water Act.⁶⁵ If the COE concludes that a Wetland Mitigation Plan is necessary, it will include the preparation and submission of one as a condition of the section 404 permit, which Rockies Express will need prior to constructing in any wetland area. Compliance with the section 404 permit is a requirement of Rockies Express’ certificate and Rockies Express is required to file any required Wetland Mitigation Plan with the Secretary for informational purposes.

188. The Conservation Guidelines, which were included in the final EIS, were developed by Rockies Express and the FWS to mitigate for potential impacts on migratory birds in accordance with the Migratory Bird Treaty Act.⁶⁶ The Conservation Guidelines will minimize and mitigate impacts related to fragmentation of forested areas through measures including, but not limited to, site-specific construction time windows, limited right-of-way maintenance, replanting of seedlings within the construction right-of-way, and on- and off-site mitigation. The agreed-upon Conservation Guidelines provide protection and mitigation for forest impacts beyond that which we normally would require. Because of the abundance of available habitat outside of the REX-East project right-of-way and the linear nature of the project over a large geographic range, we believe that further mitigation in the form of a comprehensive Upland Forest Mitigation Plan is not needed and that the mitigation the FWS and Rockies Express have agreed to are proper for this project.

189. The EPA also contends that Rockies Express should be required to file several site-specific plans prior to the issuance of the order herein “given the imminent start of construction.” However, issuance of this order alone will not enable Rockies Express to

⁶⁵ 33 U.S.C. § 1344 (2000).

⁶⁶ 16 U.S.C. §§ 703-712 (2000).

start construction. As specified in numerous conditions to this order, after receiving its certificate Rockies Express will still have to file various information and plans for review and written approval by the Director of OEP before it receives authorization to commence construction of the relevant portions of the project. This is common Commission practice for pipeline projects. Indeed, in many instances it is impractical, if not impossible, to develop site-specific plans until the Commission has issued an order specifying a route. The EPA has not presented any reason to deviate from that practice in this proceeding.

190. Finally, the EPA requests that Rockies Express commit to perform certain activities prior to the issuance of an order herein. Each of the activities specified by the EPA is attached to this order as an environmental condition. When this order issues, the environmental conditions will become binding and a failure by Rockies Express to comply with the conditions will be a violation of the NGA. Under these circumstances, we see no reason to require Rockies Express to make a commitment prior to the issuance of this order.

16. Conclusion

191. We reviewed the information and analysis contained in the final EIS regarding the potential environmental impacts of the proposed project. Based on this review, we agree with the conclusion that construction and operation of the proposed REX-East project will result in limited adverse environmental impacts. In addition, the final EIS included specific recommendations that we believe will further reduce the environmental impacts resulting from construction and operation of the REX-East project. Thus, we are including these recommendations as conditions to the authorization issued herein to Rockies Express.

192. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁶⁷

193. Rockies Express shall notify the Commission's environmental staff by telephone, e-mail, or facsimile of any environmental non-compliance identified by other federal, state, or local agencies on the same day that such agency notifies Rockies Express.

⁶⁷ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

Rockies Express shall file written confirmation of such notification with the Secretary within 24 hours.

E. Request for an Evidentiary Hearing

194. Hoosier Hills requests an evidentiary hearing to examine re-routing the REX-East pipeline away from its aquifer.

195. Section 7 of the NGA provides for a hearing when an applicant seeks a certificate of public convenience and necessity, but does not require that all such hearings be formal, trial-type hearings. An evidentiary trial-type hearing is necessary only when there are material issues of fact in dispute that cannot be resolved on the basis of the written record.⁶⁸ Hoosier Hills has not raised material issues of fact that cannot be resolved on the basis of the written record. The written evidentiary record provides a sufficient basis for resolving the issues relevant to this proceeding. We have satisfied the hearing requirement by giving interested parties an opportunity to participate through evidentiary submissions in written form.⁶⁹ Thus, we will deny Hoosier Hills' request for an evidentiary hearing.

196. The Commission on its own motion received and made part of the record in this proceeding all evidence, including the applications, as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued in Docket Nos. CP07-208-000 and CP07-208-001 authorizing Rockies Express to construct and operate approximately 639 miles of 42-inch pipeline and related compressor stations from Audrain County, Missouri east to Monroe County, Ohio, as more fully described in this order and the application.

(B) The certificate authority issued in Ordering Paragraph (A) shall be conditioned on the following:

⁶⁸ See, e.g., *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124 (D.C. Cir. 1982); *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969).

⁶⁹ *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993).

- (1) Rockies Express' completing the authorized construction of the proposed facilities and making them available for service within 18 months of the date of the order in this proceeding pursuant to section 157.20(b) of the Commission's regulations;
 - (2) Rockies Express' compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
 - (3) Rockies Express' execution of firm contracts for the capacity levels and terms of service requested in signed precedent agreements, prior to commencing construction; and
 - (4) Rockies Express' compliance with the environmental conditions listed in Appendix E to this order.
- (C) Rockies Express shall notify the Commission's environmental staff by telephone, e-mail, or facsimile of any environmental noncompliance identified by any other federal, state, or local agencies on the same day that such agency notifies the applicant. Rockies Express shall file written confirmation of such notification with the Secretary within 24 hours.
- (D) Rockies Express' proposed Zone 3 initial rates are approved.
- (E) Rockies Express must file actual tariff sheets consistent with the pro forma tariff sheets filed in this proceeding not less than 30 days, and not more than 60 days, prior to the commencement of service on the REX-East facilities.
- (F) Rockies Express' request for a presumption of rolled-in rate treatment for the proposed Arlington and Bertrand Compressor Stations is granted.
- (G) Rockies Express shall file information annually on the potential for waste heat recovery from the REX-East facilities, during the three-year period after the in-service date for those facilities.
- (H) The untimely motions to intervene in Docket No. CP07-208-000 are granted.

(I) Hoosier Hills' request for an evidentiary hearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

New Delivery Meter Stations

Rockies Express proposes the following interconnects and delivery meter station facilities:

1. The Natural Gas Pipeline Company of America Meter Station in Moultrie County, Illinois, at milepost 178.7.
2. The Ameren Power Company Meter Station in Moultrie County, Illinois, at milepost 180.4.
3. The Trunkline Gas Company Meter Station in Douglas County, Illinois, at milepost 195.7.
4. The Midwestern Gas Company Meter Station in Edgar County, Illinois, at milepost 231.9.
5. The Panhandle Eastern Pipe Line Company Meter Station in Putnam County, Indiana, at milepost 274.5.
6. The Citizens Gas and Coke Utility Meter Station in Morgan County, Indiana, at milepost 305.9.
7. The Indiana Gas Company Meter Station in Johnson County, Indiana, at milepost 316.4.
8. The ANR Pipeline Company Meter Station in Shelby County, Indiana, at milepost 342.3.
9. The Columbia Gas Transmission Corporation Meter Station-1 in Warren County, Ohio, at milepost 444.
10. The Dominion Transmission, Inc. Meter Station-1 in Warren County, Ohio, at milepost 444.
11. The Texas Eastern Transmission, LP Meter Station-1 in Warren County, Ohio at milepost 444.
12. The Texas Gas Transmission Meter Station in Warren County, Ohio, at milepost 444.

13. The Vectren Company Meter Station in Warren County, Ohio, at milepost 444.
14. The Columbia Gas Transmission Company Meter Station-2 in Fairfield County, Ohio, at milepost 539.6.
15. The Tennessee Gas Pipeline Company Meter Station in Guernsey County, Ohio, at approximately milepost 592.4.
16. The Dominion Transmission, Inc. Meter Station-2 in Noble County, Ohio, at milepost 612.3.
17. The Dominion Transmission, Inc. Meter Station-3 in Monroe County, Ohio, at milepost 639.1.
18. The Dominion East Ohio Meter Station in Monroe County, Ohio, at milepost 639.1.
19. The Texas Eastern Transmission, LP Meter Station-2 in Monroe County, Ohio at milepost 639.1.

Appendix B

REX-East Precedent Agreements

Name of Shipper	Contracted Amount (Dth per day)	Length of Contract (years)
Foundation Shippers:		
EnCana Marketing (USA) Inc.	500,000	10
Anchor Shippers:		
ConocoPhillips Company	400,000	10
Sempra Rockies Marketing, LLC	200,000	10
Ultra Resources, Inc.	200,000	10
BP Energy Company	300,000	10
Standard Shippers:		
Yates Petroleum Corporation	15,000	10
Coral Energy Resources L.P./Yates Petroleum Corporation	28,000	10
U.S. Minerals Management Service	50,000	10
Bill Barrett Company	25,000	10
EOG Resources, Inc.	50,000	10
Berry Petroleum Company	10,000	10
Arrowhead Resources (U.S.A.) Ltd.	10,000	10
SUBTOTAL	1,788,000	
Unsubscribed	12,000	
TOTAL	1,800,000	

Appendix C

Motions to Intervene in Docket No. CP07-208-000

Cheyenne Plains Gas Pipeline Company, LLC
City of Hamilton, Ohio
Colorado Interstate Gas Company
Columbia Gas Transmission Corporation
Dominion Transmission, Inc.
EnCana Corporation
Guernsey County, Ohio Landowners
Ohio Power Siting Board
Panhandle Eastern Pipe Line Corporation
Tennessee Gas Pipeline Company
The East Ohio Gas Company d/b/a Dominion East Ohio
Ultra Resources
Wyoming Interstate Company, Ltd.
Wyoming Pipeline Authority
Yates Petroleum Corporation

Appendix D

Members of the Central Illinois Pipeline Association

Circle Z Development
Walter Coleman
David Corman
Lois Britton Garrett
Joanne Jackson
Bonnie Jacobs
Gary Jostes
Larry and Linda Kallenbach
Frank Mynard
Steven McCoy
Karen Monfre
Pat Penhallegon
Janet Rhea
Dyke and Sue Ridgley
Nancy Shaljo
Jim and Linda Snow
George Wells
Laverna White
Roger White
William White

Appendix E

Environmental Conditions

1. Rockies Express shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff data requests), and as identified in the final EIS, unless modified by the Commission's order. Rockies Express must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of OEP before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the REX-East project. This authority shall allow:
 - a. the modification of conditions of the Commission's order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Rockies Express shall file with the Secretary an affirmative statement, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EIs authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the final EIS, as supplemented by filed alignment sheets. **As soon as they are available, and prior to the start of construction**, Rockies Express shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Commission's order. All requests for modifications of environmental conditions of the Commission's order or site-specific

clearances must be written and must reference locations designated on these alignment maps/sheets.

Rockies Express' exercise of eminent domain authority granted under section 7(h) of the NGA in any condemnation proceedings related to the Commission order must be consistent with these authorized facilities and locations. Rockies Express' right of eminent domain granted under section 7(h) of the NGA does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Rockies Express shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally-listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by Rockies Express' Plan, and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of its Certificate and prior to the start of construction,** Rockies Express shall file an initial Implementation Plan for the review and written approval of the Director of OEP describing how Rockies Express will implement the mitigation measures required by the Commission's order. Rockies Express must file revisions to the plan as schedules change. The plan shall identify:

- a. how Rockies Express will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to on-site construction and inspection personnel;
 - b. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions Rockies Express will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - e. the company personnel (if known) and the specific portion of Rockies Express' organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Rockies Express will follow if non-compliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the mitigation training of on-site personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Rockies Express shall file updated status reports prepared by the lead EI on a **weekly basis until all construction-related activities, including restoration, are complete**. These status reports shall also be provided to other federal and state agencies with permitting responsibilities upon request. Status reports shall include:
- a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of non-compliance observed by the EIs or the third-party compliance monitors during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies). This shall also include an identification of utilities damaged and/or service interrupted by the construction of the project;

- c. a description of corrective actions implemented in response to all instances of noncompliance, and their cost. For all damaged utilities and/or service interruptions, this shall include a description of steps taken to restore the utility to pre-construction conditions or better;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints that may relate to compliance with the requirements of the Commission's order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Rockies Express from other federal, state, or local permitting agencies concerning instances of non-compliance, and Rockies Express' response.
8. Rockies Express shall develop and implement an environmental complaint resolution procedure that remains active for at least three years following the completion of construction for the project. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Prior to the start of construction**, Rockies Express shall file with the Secretary the environmental complaint resolution procedures and mail the environmental complaint resolution procedures to each landowner whose property would be crossed by the respective project.
- a. In its letter to affected landowners, Rockies Express shall:
 - i. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon to expect a response;
 - ii. instruct the landowners that, if they are not satisfied with the response, they should call Rockies Express' Hotline, as applicable; the letter should indicate how soon to expect a response; and
 - iii. instruct the landowners that, if they are still not satisfied with the response from Rockies Express' Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030, or at hotline@ferc.gov.
 - b. In addition, Rockies Express shall file with the Secretary weekly status reports that include a table that contains the following information for each problem/concern:
 - i. the identity of the caller and the date of the call;

- ii. the identification number from the certificated alignment sheet(s) of the affected property and appropriate location by milepost;
 - iii. a description of the problem/concern; and
 - iv. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
9. Rockies Express must receive written authorization from the Director of OEP **before commencing service of the project**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas of project-related disturbance are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Rockies Express shall file an affirmative statement, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Rockies Express has complied with or will comply with. This statement also shall identify any area affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. Rockies Express shall defer obtaining service from Duke Energy's planned transmission line until comments of the Ohio SHPO and the FWS on the transmission line have been filed with the Secretary and the Director of OEP issues written approval to obtain service.
12. In areas where the pipeline parallels Panhandle's 300 and 400 lines (MPs 33.8 to 69.2; MPs 98.3 to 128.0; MPs 194.1 to 220.1; and MPs 259.0 to 274.4), Rockies Express shall revise its construction plans in order to overlap, for spoil storage purposes, 15 feet of the existing Panhandle permanent right-of-way.
13. Rockies Express shall revise its construction plans to center the pipeline within the permanent right-of-way in areas where it is currently shown within 10 feet of the edge of the permanent right-of-way, unless this would decrease the separation distance between its pipeline and the Panhandle 100 and 200 lines to less than 65 feet, and incorporate these revisions to its pre-construction planning, revising the REX-East right-of-way configurations as necessary. Rockies Express shall file the revised right-of-way configurations with the Secretary **prior to the start of construction**.
14. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, the proposed use and

site-specific justification for the size of each of its proposed additional temporary workspaces.

15. Rockies Express shall not exercise eminent domain authority granted under section 7(h) of the NGA to acquire an additional 35-foot-wide temporary workspace for the storage of topsoil. Rockies Express may negotiate for the use of these extra workspaces for topsoil storage.

16. Rockies Express shall revise its Plan and Procedures to be consistent with Tables 2.3-1 and 2.3-2 of the final EIS. Rockies Express shall file its revised Plan and Procedures with the Secretary, **prior to the start of construction.**

17. Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a site-specific justification for each additional workspace that is within 50 feet of a wetland or waterbody, **prior to the start of construction.**

18. **Prior to the start of construction,** Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a bulk material disposal plan for excess rock, trees, brush, and other construction debris.

19. Rockies Express shall develop a Hydrostatic Testing Plan that includes, but is not limited to, the following information:

- a. the screen size proposed for use on intake hoses to prevent entrainment of fish; and
- b. documentation that appropriate federal and state agencies have been consulted regarding the establishment of water withdrawal rates to ensure the withdrawals would have minimal impact on flows, fisheries, and downstream water users.

This Hydrostatic Testing Plan shall be filed with the Secretary, for review and written approval by the Director of OEP, **prior to the start of construction.**

20. Rockies Express shall revise its Procedures to use a 75-foot-wide construction right-of-way for wetlands. Rockies Express shall incorporate these revisions in its pre-construction planning, revising the REX-East construction alignment sheets, as necessary, to accommodate the revised work areas. For wetlands that Rockies Express believes would require a right-of-way width greater than 75 feet, Rockies Express shall file with the Secretary site-specific justifications in its implementation plan for the project, for review and written approval by the Director of OEP, **prior to the start of construction.**

21. **Prior to the use of the microtunneling technique,** Rockies Express shall file with the Secretary a list of fluids that would be used during the tunneling process. No microtunneling shall take place until the list has been approved by the Director of OEP.

22. In consultation with the DOT and the power company, Rockies Express shall develop a construction plan for all locations where the REX-East pipeline would cross or be constructed along or with power line rights-of-way. In addition, the plan shall include any additional measures that would be used in these areas during operation to prevent damage to the pipeline that could be caused by fault currents and induced voltages. Rockies Express shall file this plan with the Secretary, **prior to the start of construction.**

23. Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a draft third-party environmental monitoring program and obtain proposals from potential contractors to provide monitoring services, and file the program and proposals with the Secretary for review and written approval by the Director of OEP **at least 60 days prior to the anticipated start of pipeline construction.** The monitoring program shall include:

- a. the employment by the contractor of one or two full-time onsite monitors per construction spread;
- b. the employment by the contractor of at least one full-time onsite monitor with knowledge of agricultural practices in the project area;
- c. the employment by the contractor of a full-time compliance manager to direct and coordinate with the monitors, manage the reporting system, and provide technical support to the Commission's staff;
- d. a systematic strategy for the review and approval by the contract compliance manager and monitors of variances to certain construction activities as may be required by Rockies Express based on site-specific conditions;
- e. the development of an Internet web site for posting daily or weekly inspection reports submitted by both the third-party monitors and Rockies Express' EIs; and
- f. a discussion of how the monitoring program can incorporate and/or be coordinated with the monitoring or reporting and other ongoing communication that may be required by other federal, state, and local agencies.

24. **Prior to the start of construction from MPs 291.0 to 291.3,** Rockies Express shall incorporate the variation for the McCarroll property as depicted in Appendix J, Figure J-1 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets.

25. **Prior to the start of construction from MPs 300.5 to 301.0,** Rockies Express shall incorporate the variation for the Rogers property as depicted in Appendix J, Figure J-2 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets.

26. **Prior to the start of construction from MPs 318.1 to 318.5**, Rockies Express shall incorporate the Parker variation for the Parker property as depicted in Appendix J, Figure J-4 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets.
27. **Prior to the start of construction from MPs 370.0 to 370.6**, Rockies Express shall incorporate the route variation for the Alverson properties as depicted in Appendix J, Figure J-5, in the final EIS, specifically avoiding to the maximum extent practicable, the removal of trees located adjacent to the southern boundary of the Alverson property. Rockies Express shall file with the Secretary updated alignment sheets.
28. **Prior to the start of construction from MPs 376.3 to 376.8**, Rockies Express shall incorporate the route variation for the Brattain property as depicted in Appendix J, Figure J-6 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets.
29. **Prior to the start of construction from MPs 380.4 to 380.6**, Rockies Express shall incorporate the route variation for the Yane property as depicted in Appendix J, Figure J-7 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets and site-specific erosion and spill control measures to protect the Yane's pond from contamination and siltation.
30. **Prior to the start of construction from MPs 383.1 to 384.0**, Rockies Express shall incorporate the route variation for the Morgan property as depicted in Appendix J, Figure J-8 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets.
31. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval of the Director of OEP, a site-specific construction plan for an extended bore to cross Walnut Fork Creek and Pipe Creek Road.
32. **Prior to the start of construction from MPs 395.1 to 395.8**, Rockies Express shall incorporate the route variation for the White property as depicted in Appendix J, Figure J-10 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets.
33. **Prior to the start of construction from MPs 401.5 to 402.4**, Rockies Express shall file:
 - a. documentation of consultations with the newly affected landowner(s) regarding an easement agreement for the route variation from MPs 401.5 to 402.4, as depicted in Appendix J, Figure J-11 of the final EIS; or
 - b. documentation of consultation with Schulte, Oetzel, and Stirn to identify an alternative route variation on their property which would address their concerns.

Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, revised alignment sheets and a summary of the resources (e.g., forests, wetlands, sensitive species, and cultural resources) affected by the revised route.

34. **Prior to the start of construction from MPs 405.1 to 405.9**, Rockies Express shall incorporate the route variation for the Minges and Schoenharl properties as depicted in Appendix J, Figure J-12 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets.

35. **Prior to the start of construction from MPs 406.2 to 406.5**, Rockies Express shall incorporate the route variation for the Maus property as depicted in Appendix J, Figure J-13 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets.

36. **Prior to the start of construction from MPs 417.8 to 418.4**, Rockies Express shall file:

- a. documentation of consultations with the newly affected landowner(s) regarding an easement agreement for the route variation from MPs 417.8 to 418.4, as depicted in Appendix J, Figure J-14 of the final EIS; or
- b. documentation of consultation with Storck-Stump and Hesford to identify an alternative route variation on their property which would address their concerns.

Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, revised alignment sheets and a summary of the resources (e.g., forests, wetlands, sensitive species, and cultural resources) affected by the revised route.

37. **Prior to the start of construction from MPs 426.1 to 426.3**, Rockies Express shall incorporate the Chase route variation as depicted in Appendix J, Figure J-15 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets.

38. **Prior to the start of construction from MPs 452.7 to 453.8**, Rockies Express shall incorporate the Frye route variation as depicted in Appendix J, Figure J-17 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets. This information shall also be provided concurrently to the Village of Waynesville, Ohio, Waste and Water Division of the Utilities Department, and other applicable agencies regarding construction in the WPA.

39. **Prior to the start of construction from MPs 458.1 to 458.9**, Rockies Express shall incorporate the revised route variation for the Mowrey and Jones properties as depicted in Appendix J, Figure J-18 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets.

40. **Prior to the start of construction from MPs 459.8 to 460.0**, Rockies Express shall incorporate the Rowe route variation as depicted in Appendix J, Figure J-19 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets.

41. **Prior to the start of construction from MPs 477.1 to 477.5**, Rockies Express shall incorporate the route variation for the Kile property as depicted in Appendix J, Figure J-20 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets.

42. **Prior to the start of construction from MPs 521.9 to 523.3**, Rockies Express shall file:

- a. documentation of consultations with the newly affected landowner(s) regarding an easement agreement for the route variation from MPs 521.9 to 523.3, as depicted in Appendix J, Figure J-21 of the final EIS; or
- b. documentation of consultation with Scothorn and Petty to identify an alternative route variation on their property which would address their concerns.

Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, revised alignment sheets and a summary of the resources (e.g., forests, wetlands, sensitive species, and cultural resources) affected by the revised route.

43. **Prior to the start of construction from MPs 555.4 to 557.3**, Rockies Express shall file with the Secretary revised alignment sheets to incorporate the Rockies Express Noll Route Variation (i.e., the proposed route) as depicted in Appendix J, Figure J-22 in the final EIS.

44. **Prior to the start of construction from MPs 623.3 to 624.4**, Rockies Express shall file:

- a. documentation of consultations with the newly affected landowner(s) regarding an easement agreement for the route variation from MPs 623.3 to 624.4, as depicted in Appendix J, Figure J-23 of the final EIS; or
- b. documentation of consultation with Shaffer to identify an alternative route variation on their property which would address their concerns.

Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, revised alignment sheets and a summary of the resources (e.g., forests, wetlands, sensitive species, and cultural resources) affected by the revised route.

45. **Prior to the start of construction from MPs 384.0 to 384.4**, Rockies Express shall incorporate Rockies Express' Revised MP 384 Variation for residences at MPs 384.3 and 384.4 as depicted in Appendix J, Figure J-24 in the final EIS. This route variation shall be similar to that shown in Rockies Express' February 19, 2008 filing, but start at MP 384.0. Rockies Express shall file with the Secretary updated alignment sheets.
46. **Prior to the start of construction from MPs 446.5 to 447.4**, Rockies Express shall incorporate the Revised McCarty Variation for the McCarty's property as depicted in Appendix J, Figure J-25 in the final EIS. Rockies Express shall file with the Secretary updated alignment sheets and provide a landowner notification package to the newly affected landowner(s).
47. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a site-specific plan for oil or gas wells within the construction work area, both active and abandoned. The plan shall include details on how the wells would be protected and monitored during construction, and discuss how it would determine if any damage attributable to construction activities occurred to the above-ground equipment, casing, or plug (for abandoned wells). The plan shall also discuss how any damage would be mitigated.
48. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a plan developed in consultation with the appropriate state agencies for the identification of karst features and mitigation for crossing any such features identified during construction. This plan shall also indicate how areas with these features would be monitored during the life of the project and what steps would be taken if the area were to destabilize in the future.
49. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a contingency plan developed in consultation with state and federal natural resource agencies for HDDs in the karst areas identified on Table 4.1.3-2 in the final EIS. This plan shall include pre-construction identification of the potential for subsurface karst features and identify what Rockies Express would do if a solution void is intercepted to limit the amount of mud lost and successfully complete the drill.
50. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a Mining Subsidence Plan that at a minimum addresses the following:
- a. this plan shall indicate how areas where the pipeline would cross underground mines would be monitored during the life of the project and what steps would be taken if the area were to destabilize in the future; and

b. communications with mining companies planning to use longwall or room and pillar mining techniques in areas of the pipeline. The plan shall outline the monitoring protocol and mitigation measures that may be implemented to prevent subsidence impacts from these specific types of mining to the pipeline.

51. **Prior to the start of construction**, Rockies Express shall consult with the INDNR and the ODNR to discuss the scour susceptibility of waterbodies crossed by the project. Rockies Express shall file the results of its consultations and a revised list of scour-prone areas with the Secretary.

52. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a High Water Contingency Plan for the construction of the Mississippi River crossing. This plan shall be developed in consultation with COE.

53. Rockies Express shall prepare an Agricultural Wet Weather Contingency Plan to address construction practices in agricultural areas during wet weather (i.e., active precipitation and/or saturated ground or as otherwise determined by the EI). This plan shall include, at a minimum:

- a. a determination of the allowable depth of rutting and allowable working conditions, prior to suspension of construction activities, based on the type of soil, topsoil, and subsoil thickness and/or using the Atterberg Field Test Procedure;
- b. designation of authority for the onsite agricultural inspector (AI) to have “stop-work” authority in the event that wet weather conditions place topsoil and subsoil at risk; and
- c. identification of alternate construction procedures to enable activities to continue without risking the loss and/or mixing of topsoil and subsoil and severe compaction in the event of an unseasonably wet construction season.

This plan shall be filed with the Secretary, for review and written approval by the Director of OEP, **prior to the start of construction**.

54. **Prior to the start of construction**, Rockies Express shall file with the Secretary the locations by milepost of all springs, seeps, and wells identified within 150 feet of construction work areas.

55. **Prior to the start of construction**, Rockies Express shall file with the Secretary a revised SPCC Plan that states it would restrict refueling or other liquid transfer within 100 feet of wetlands and waterbodies, 200 feet of any private water supply wells, and 400 feet of any municipal supply wells.

56. Rockies Express shall develop a site-specific specialized spill plan that would further reduce the likelihood of spills/leaks from construction-related equipment impacting the Hoosier Hills WPA. This plan shall be in addition to Rockies Express' SPCC Plan and shall contain a list of all fluids that would be used during construction in the area. Rockies Express shall file this plan with the Secretary, for review and written approval of the Director of OEP, **prior to the start of construction** between MPs 393 and 394.

57. Rockies Express shall develop a water quality testing plan for Hoosier Hills' existing wells in consultation with Hoosier Hills. This plan shall include water quality testing **prior to, during, and for two years post construction** to document any construction-related impacts on the Hoosier Hills WPA. Rockies Express shall file a finalized plan with the Secretary **prior to the start of construction**. Copies of the water quality test results shall be provided to Hoosier Hills.

58. Rockies Express shall notify Hoosier Hills at least **48 hours prior to the start of construction** between MPs 393 and 394.

59. **Prior to the start of construction**, Rockies Express shall file with the Secretary documentation of consultations with applicable local and state agencies regarding construction in areas with WPAs or other groundwater management areas crossed by the pipeline.

60. **Within 30 days of placing the pipeline facilities in service**, Rockies Express shall file a report with the Secretary identifying all water supply wells/systems damaged by construction and how they were repaired. The report shall include a discussion of any complaints concerning the well yield or quality and how each problem was resolved.

61. **Prior to the start of construction**, Rockies Express shall file with the Secretary documentation of finalized consultation with the organizations or individuals who withdraw potable water within three miles of the open-cut crossings of Flatrock River (MP 362.7) in Indiana and Somerset Creek (MP 553.2) in Ohio, along with documentation of finalized consultations with the City of Louisiana, Missouri.

62. Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, the results of its HDD geotechnical feasibility investigations, revised site-specific construction diagrams, and contingency plans for the Embarras and Muskingum Rivers' HDD locations. If a planned HDD crossing is not feasible, Rockies Express shall develop a site-specific alternative crossing plan for each waterbody in consultation with all relevant agencies. Rockies Express' plans and documentation of consultations regarding the site-specific HDD plans shall be filed with the Secretary **prior to the start of construction**.

63. Rockies Express shall cross all dry intermittent waterbodies using the open-cut method with application of the mitigation measures described in v(B)(2) through v(B)(4) of its Procedures.
64. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, revised site-specific crossing plans that identify specific restoration and mitigation measures applicable to each sensitive waterbody crossing listed in Tables 4.3.5-1 and 4.6.2-1 of the final EIS and any applicable state and federal agency consultations.
65. **Prior to initiating an alternative crossing method** at Paint Creek or the White River, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, consultations with all applicable state and federal agencies.
66. **Prior to the start of construction**, Rockies Express shall successfully complete the HDD or microtunneling crossing of the Little Miami River between MPs 432.9 and 467.2.
67. **Prior to the start of construction**, Rockies Express shall successfully complete the HDD or microtunneling crossing of Big Darby Creek between MPs 494.1 and 533.9.
68. **Prior to the start of construction**, Rockies Express shall develop and file site-specific plans with the Secretary, for review and written approval by the Director of OEP, that identify the source and discharge locations of hydrostatic test water used for the HDD of Little Miami River and Big Darby Creek.
69. Rockies Express shall provide Hoosier Hills a copy of hydrostatic test water analysis **prior to discharge** to the Whitewater River.
70. Rockies Express shall prepare site-specific blasting plans for each wetland with shallow bedrock **prior to blasting**. Rockies Express shall also evaluate and incorporate appropriate methods to seal fractures in the bedrock following blasting to help prevent possible drainage of the wetlands. Rockies Express shall file this plan with the Secretary for review and written approval by the Director of OEP.
71. **Prior to the start of construction**, Rockies Express shall develop a site-specific wetland restoration plan for Blackburn Island in consultation with the COE, FWS, and MODNR. Rockies Express shall file this plan with the Secretary for review and written approval by the Director of OEP.
72. **Prior to the start of construction**, Rockies Express shall consult with the COE, FWS, and other appropriate state and federal agencies regarding replanting, monitoring, and managing reforestation, including compensatory mitigation for wetland impacts for all temporary and permanent rights-of-way, additional temporary workspaces, and

contractor yards/pipe yards located within forested wetlands. Rockies Express shall include this information in its Wetland Mitigation Plan.

73. **Prior to the start of construction**, Rockies Express shall finalize consultations with the COE, FWS, and appropriate state and federal agencies to develop its Wetland Mitigation Plan and file with the Secretary a final Wetland Mitigation Plan and the results of its consultations with these agencies.

74. For all HDDs, Rockies Express shall not clear any trees between the workspace for the drill entry site and the workspace for the exit site **during construction**. Minor brush clearing, less than three feet wide, using hand tools is allowed to facilitate the use of the HDD tracking system.

75. Rockies Express shall use onsite markers along the permanent right-of-way for identifying “no-clearing” zones within vegetated riparian strips adjacent to waterbodies that are to be avoided during maintenance activities.

76. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a site-specific construction plan that uses a 75-foot right-of-way within the classified forest between approximate MPs 331.9 and 332.2 and provides justification for any temporary workspace which requires the removal of trees.

77. **Prior to the start of construction**, Rockies Express shall develop its Compensatory Mitigation Plan for classified forest areas in Indiana in consultation with classified forest landowners; the INDNR, Division of Forestry; and the local District Forester. This plan shall be filed with the Secretary along with documentation of related consultation for review and written approval by the Director of OEP.

78. **Prior to the start of construction**, Rockies Express shall file with the Secretary a copy of its Flood Control Permit from the INDNR.

79. **Prior to the start of construction**, Rockies Express shall identify affected CRP lands in consultation with landowners to develop mitigation measures to protect CRP lands. Rockies Express shall file this information with the Secretary along with copies of all related correspondence.

80. Rockies Express shall use only certified weed-free straw or hay bales for sediment barriers or mulch during construction and revegetation of disturbed areas.

81. **Prior to the start of construction**, Rockies Express shall consult with the Comprehensive Wildlife Conservation Strategy Coordinators for Missouri, Indiana, and Ohio to verify that it is in compliance with each state’s Comprehensive Wildlife Conservation Strategy to the maximum extent practicable and file with the Secretary documentation of this correspondence.

82. **Prior to the start of construction**, Rockies Express shall file with the Secretary documentation of consultations with the FWS to determine the need for bald eagle surveys. If surveys are required, Rockies Express shall file with the Secretary survey reports along with the FWS' comments on those surveys and documentation of its consultation with the FWS.

83. **During construction and operation of the project**, Rockies Express shall comply with the Conservation Guidelines developed in consultation with the FWS to minimize impacts to forested lands and migratory birds.

84. **Prior to the start of construction** Rockies Express shall develop construction schedules in consultation with the Missouri Department of Conservation and appropriate agencies responsible for managing the Grassy Creek and the Upper Mississippi Conservation Opportunity Area to minimize construction-related impacts on migratory birds, waterfowl, deer, and turkey.

85. Rockies Express shall comply with the waterbody crossing time windows established by the ILDNR (no construction activities from March 1 to June 30), the INDNR (no construction activities, including installation of bridges requiring in-stream support, between April 1 and June 30), and the Ohio Public Service Board (no construction activities between April 15 and June 30), unless provided with written approval from the appropriate state agency.

86. Rockies Express shall use a dry-ditch technique such as flume, dam-and-pump, bore, or HDD to cross any waterbodies that are considered fisheries of special concern with a wetted width less than 30 feet, as described in Table 4.6.2-1 of the final EIS. If a wet crossing method would be used for waterbodies less than 30 feet wide, Rockies Express shall file with the Secretary the proposed crossing method and documentation of approval by the appropriate state and federal agencies **prior to the start of construction**.

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

- a. remove trees during the inactive season (between October 1 and March 31); or
- b. remove trees while bats are foraging under the following conditions:
 - i. tree removal would occur between one hour after sunset and one hour before sunrise;
 - ii. temperature would be greater than 50°F; and
 - iii. no precipitation or strong winds (as before an approaching thunderstorm).

88. For the habitat unit IDs surveyed in 2007 and for which Indiana bats were identified and nursery roost trees were identified, Rockies Express shall, **prior to the start of construction**, reconfirm the location of the nursery roost tree(s) to determine if the tree(s) remain(s) suitable. This requirement would apply to all sites in Table 4.7.1-3 of the final EIS where at least one roost tree was identified, as well as to Habitat Unit IDs MO-3.0, IN-32.0, and OH-10.7.

a. If the nursery roost tree remains a suitable nursery roost tree, Rockies Express would avoid the nursery tree and immediate microclimate (as identified by a certified biologist and approved by the FWS) by altering the construction area and placement of the pipeline route. A minimum distance of 100 feet would be maintained between the construction area and the nursery roost tree and Rockies Express would (a) erect fencing to delineate the boundary and prevent inadvertent encroachment into the area, and (b) erect signs stating “No Trespassing” or “Do Not Disturb – Sensitive Area.”

b. If the nursery roost tree is no longer suitable, Rockies Express would implement one of the following conservation measures:

- i. Conduct a radiotelemetry study in accordance with FWS-approved 2007 procedures to locate new nursery roost tree(s) and, if within the action area, avoid the tree(s) and its microclimate in accordance with Conservation Measure 3(a)(i) in the BA; or
- ii. Protect all potential nursery trees (live or standing dead trees or snags over nine inches dbh with exfoliating, peeling or loose bark, split trunks or branches, or cavities). These characteristics must be plentiful enough to allow the colony to change locations along the tree to aid in thermoregulation. If the habitat characteristics are found only on the branches of the tree, the branches must be at least eight inches in diameter at the site of the habitat characteristics. These trees must have some solar exposure and trees must be part of, or connected to, a travel corridor or forested area within the action area. Rockies Express must treat all potential nursery roost trees as actual nursery roost trees; or
- iii. Identify potential nursery roost trees and conduct exit counts to determine whether it is an occupied nursery roost (if more than 20 bats are observed, the tree would be classified as an occupied nursery tree; if fewer than 20 bats are observed, the tree would be classified as an alternate roost tree). If a nursery roost tree is documented, avoid the tree and its microclimate per Conservation Measure 3(a)(i) in the BA. If it is not documented as a nursery roost tree, employ applicable alternate

roost tree avoidance measures per recommendation and Conservation Measure 2 in the BA.

89. In all areas that were not surveyed in 2007, including any areas where the alignment has shifted such that unsurveyed habitat may be affected (see Table 4.7.1-5 in the final EIS), Rockies Express shall survey the areas in accordance with the FWS-approved 2007 procedures to locate new nursery roost tree(s). **Prior to the start of construction** in an unsurveyed habitat unit ID area, Rockies Express shall complete all surveys and submit the findings to the Commission and FWS for review and comment. Rockies Express shall not begin construction in the habitat unit ID until it has received written notification from the Director of OEP that construction or use of mitigation may begin. Based on the findings of the surveys to be conducted in 2008, Rockies Express shall implement one of the following measures:

a. if a nursery roost tree is identified, Rockies Express would avoid the nursery tree and immediate microclimate (as identified by a certified biologist and approved by the FWS) by altering the construction area and placement of the pipeline route. A minimum distance of 100 feet would be maintained between the construction area and the nursery roost tree and Rockies Express would erect fencing to delineate the boundary and prevent inadvertent encroachment into the area.

b. if Indiana bats are captured and a nursery roost tree is not identified, Rockies Express would identify potential nursery roost trees and conduct exit counts to determine whether it is an occupied nursery roost (if more than 20 bats are observed, the tree would be classified as an occupied nursery tree; if fewer than 20 bats are observed, the tree would be classified as an alternate roost tree). If a nursery roost tree is documented, Rockies Express must avoid the tree and its microclimate per Conservation Measure 3(a)(i) in the BA. If it is not documented as a nursery roost tree, Rockies Express must employ applicable alternate roost tree avoidance measures per recommendation and Conservation Measure 2 in the BA.

90. **Prior to the start of construction**, Rockies Express shall file with the Secretary and FWS an updated list of areas that remain to be surveyed for Indiana bats identifying the habitat unit IDs by milepost.

91. **Prior to the start of construction** within an identified habitat unit ID, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, the specific mitigation measures in accordance with the BA that would apply based on the survey results.

92. **During construction**, Rockies Express shall not burn trees, limbs, brush, and debris in the right-of way within 500 feet of the entire area of suitable habitat associated with each habitat unit ID.
93. **For the life of the project**, Rockies Express shall not use herbicides or pesticides for maintenance of the permanent right-of-way or adjacent forested areas, regardless of whether Indiana bats are present, except as allowed by the appropriate land management agency or state agency.
94. In the event that a trenchless crossing fails at the Mississippi River, Wabash River, Big Walnut Creek, or Big Darby Creek, Rockies Express shall halt construction activities at the crossing(s) until Rockies Express files with the Secretary and receives written approval from the Director of OEP for a site-specific alternate waterbody crossing plan developed in consultation with the Commission, COE, and FWS. The plan shall include:
- a. scaled drawings identifying all areas that would be disturbed by an alternative crossing method; and
 - b. a description of the mitigation measures that would be implemented to minimize the extent and duration of disturbance on the river and the Indiana bat.
95. In addition, Rockies Express shall not begin an alternative crossing of the Mississippi River, Wabash River, Big Walnut Creek, or Big Darby Creek until:
- a. the Commission evaluates the potential impact on the Indiana bat and the Commission's staff completes consultation with the FWS;
 - b. the Commission, FWS, and COE determine that the alternative crossing method and mitigation plan are acceptable; and
 - c. the Director of OEP notifies Rockies Express in writing that it may proceed with the alternative river crossing plan.
96. Rockies Express shall use a dry-ditch crossing method at Sugar Creek (MP 484.3).
97. To minimize potential impacts on foraging Indiana bats during construction, Rockies Express shall limit specific construction activities (clearing, trenching, welding, backfilling, and grading) within 300 feet of documented nursery roost trees and alternative roost trees identified during the field surveys from one-half hour after dawn to one-half hour before dusk for the period of tree clearing restriction as identified by the FWS (April 1 to September 30). This timing restriction would allow ample time for bats to return to roost trees at dawn and time for bats to emerge from roosts at dusk.
98. Rockies Express shall have a FWS qualified biologist supervise tree clearing operations in Indiana bat habitat along the construction areas to ensure that individual

bats that may be in the vicinity are not harmed, and all tree clearing activities are in compliance with the FWS' requirements as identified above under Compensation, Mitigation, and Monitoring.

99. **During construction**, if any whooping cranes are encountered in the immediate vicinity of the construction work area, Rockies Express shall:

- a. immediately stop construction in that area;
- b. contact the FWS and the Commission to determine what protection measures would be required; and
- c. work may not resume in the area until Rockies Express has been notified by the Director of OEP in writing.

100. **Prior to the start of construction**, Rockies Express shall file with the Secretary completed mussel survey reports for the federally listed mussel species in Anderson Fork, East Fork Paint Creek, Little Walnut Creek, Tributary to Burley Run, Brush Creek, Buffalo Fork, Tributary to Crabapple Creek, and Cat Run in Ohio, documentation of its consultation with the FWS and ODNR, and conservation measures necessary to minimize impact to mussel beds.

101. **During construction**, Rockies Express shall not withdraw hydrostatic test water from Sugar Creek, the Scioto River, Deer Creek, and Big Darby Creek or the tributaries of these waterbodies in order to protect endangered mussels or glochidia/host fish or juveniles from direct impacts.

102. In the event that a trenchless crossing fails at the Scioto River, Deer Creek in Deer Creek State Park, or Big Darby Creek, Rockies Express shall stop construction activities at the crossing(s) until it files with the Secretary, for written approval from the Director of OEP, a site-specific alternate waterbody crossing plan developed in consultation with the Commission, COE, and FWS. The plan shall include:

- a. the specific reasons that the trenchless technique was not successful;
- b. a description of how Rockies Express would seal the abandoned drill hole;
- c. scaled drawings identifying all areas that would be disturbed by an alternative crossing method; and
- d. a description of the mitigation measures that would be implemented to minimize the extent and duration of disturbance on the river and any mussels.

103. Rockies Express shall not begin an alternative crossing of the Scioto River, Deer Creek in Deer Creek State Park, or Big Darby Creek until:

- a. the Commission evaluates the potential impact on the mussel species and the Commission's staff completes consultation with the FWS;
 - b. the Commission, FWS, and COE determine that the alternative crossing method and mitigation plan are acceptable; and
 - c. the Director of OEP notifies Rockies Express in writing that it may proceed with the alternative river crossing plan.
104. For the running buffalo clover, Rockies Express shall:
- a. file with the Secretary completed survey reports and documentation of its consultation with the FWS **prior to the start of construction**;
 - b. implement the following **prior to the start of construction** if running buffalo clover is identified within the action area during remaining surveys:
 - i. if plants are located adjacent to or along the edge of the construction right-of-way, fence off the plants and avoid the area;
 - ii. if plants are located within the construction right-of-way, modify the construction right-of-way configuration to avoid plants, retain tree cover in and around plants, and fence off the plants;
 - iii. use only approved native plant species during restoration of the right-of-way;
 - iv. prohibit herbicide applications within 200 feet of the plants and avoid mowing between May and June; and
 - v. consult with the FWS to develop site-specific invasive plant control measures to include a monitoring plan. Rockies Express shall file these measures with the Secretary for review and written approval by the Director of OEP.
 - c. not burn in or adjacent to any areas where an individual or population of running buffalo clover has been identified **during construction**.
105. Rockies Express shall develop and implement a five-year post-construction monitoring program to evaluate crop productivity in areas impacted by construction. Rockies Express shall file with the Secretary **quarterly reports for a period of five years following construction** documenting any crop-related problems, including soil heating near compressor stations, identified by the company or landowner and describing any corrective action taken to remedy those problems. If any landowner agrees that revegetation and crop productivity are successful prior to the five-year requirement,

Rockies Express shall provide documentation in its quarterly reports, indicating which landowners have agreed that monitoring is no longer necessary. This documentation shall include the landowner name, tract number, and the date of agreement. Copies of the quarterly reports shall be provided to all landowners and tenants of properties being monitored.

106. Rockies Express shall employ two AIs for Spreads 1, 2, 3, 4, and 5.

107. Rockies Express shall hire local drain tile contractors to install/repair drain tiles that are damaged or need to be rerouted due to construction activities.

108. **During construction**, Rockies Express shall identify and mark all encountered, severed, and/or damaged tile lines on each affected landowner's property using GPS coordinates accurate to one meter. Rockies Express shall provide this information to the landowner and the local county Soil and Water Conservation District, and the information shall be kept in the company's landowner records for future reference.

109. Rockies Express shall bury the pipeline at a minimum depth of five feet where the pipeline would cross agricultural fields unless otherwise negotiated with landowners.

110. **Prior to the start of construction**, Rockies Express shall file documentation with the Secretary, demonstrating that landowners who have already signed an easement agreement with the provision for three feet of cover in agricultural fields were offered the opportunity to request five feet of cover.

111. **Prior to the start of construction in the vicinity of the affected properties**, Rockies Express shall file site-specific mitigation plans, developed in consultation with the affected landowners, with the Secretary for review and written approval by the Director of OEP describing how potential impacts to the horses and the operation of the businesses would be avoided, minimized, or mitigated between MPs 523 and 524 and at MP 460. The plans shall indicate how Rockies Express would protect the horses during construction and restoration. Rockies Express shall also provide the two landowners with a copy of the plan for their property.

112. Rockies Express shall reduce the construction right-of-way to 75 feet through the forested portion of Wilson Friendly Maple Farm.

113. **Prior to the start of construction in the vicinity of the Chester Township Fire Station**, Rockies Express, in consultation with local emergency response officials, shall develop a plan to maintain safe egress at the Chester Township Fire Station.

114. **Prior to the start of construction**, Rockies Express shall file site-specific plans with the Secretary, for review and written approval by the Director of OEP, that:

- a. describe the measures that would be taken to minimize construction impacts on each residence within 25 feet of a construction work area, including but not limited to reduced pipeline separation, centerline adjustment, use of stove-pipe or drag-section techniques, working over existing pipelines, pipeline crossover, bore, or a minor route variation;
- b. include a discussion of how Rockies Express would ensure that the trench is not excavated until the pipe is ready for installation and that the trench is backfilled immediately after pipe installation; and
- c. include evidence of landowner concurrence if the construction work area and fencing will be located within 10 feet of a residence.

115. **Prior to the start of construction**, Rockies Express shall identify all septic systems, present each property owner with a copy of the Septic System Contingency Plan, and restore, relocate, or replace all septic systems damaged during construction, whether or not such mitigation was part of the easement negotiation.

116. **Prior to the start of construction in the vicinity of the Fairfield County Airport**, Rockies Express shall consult with the Federal Aviation Administration and the Ohio Department of Transportation, Office of Aviation, about any restrictions in the vicinity of the Fairfield County Airport during construction. Rockies Express shall make the appropriate filings with these agencies prior to starting construction in the vicinity of the airport.

117. **Prior to the start of construction of the Mississippi River crossing**, Rockies Express shall maintain public access to the boat ramp adjacent to the exit site for the HDD for the Mississippi River crossing. If access cannot be maintained, Rockies Express shall file with the Secretary a plan for mitigating the impact.

118. **Prior to the start of construction at the West Fork White River**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a plan for setting up a safe portage for canoeists who wish to traverse the crossing area of the West Fork White River during construction. This plan shall include assistance transporting canoes around the work area for those who request help.

119. Rockies Express shall maintain public access to the B&O trail and avoid tree cutting at the crossing location.

120. Rockies Express shall work with Camp Woodsmoke to determine a schedule for crossing the camp. Rockies Express shall discuss with the camp the need for any additional safety mitigation (fencing, signs) during construction in the camp. The results of this consultation shall be filed with the Secretary **prior to the start of construction in Camp Woodsmoke**.

121. **Prior to the start of construction of each crossing,** Rockies Express shall file with the Secretary, and provide to the NPS, a site-specific plan for the crossing of each tributary of the Little Miami River developed in consultation with the NPS. These plans shall include:

- a. dry-crossing method;
- b. minimization of tree clearing;
- c. erosion controls that would minimize downstream siltation; and
- d. a restoration and revegetation plan.

122. **Prior to the start of construction,** Rockies Express shall consult with the NPS to determine which of the tributaries of Big Darby Creek that would be crossed should be surveyed for mussels and fish spawning areas. **Prior to the start of construction,** Rockies Express shall file the results of any required surveys with the Secretary along with any correspondence with NPS.

123. **Prior to the start of construction,** Rockies Express shall file with the Secretary a plan for the construction and restoration of the Little Miami Scenic State Park. Rockies Express shall also include a plan for maintaining safe public access through the construction area and revegetating the disturbed areas by planting native vegetation. This plan shall be developed in consultation with ODNR.

124. **Prior to the start of construction,** Rockies Express shall file with the Secretary a site-specific crossing, mitigation, and restoration plan for pipeline construction activities in Caesar Creek State Park and Wildlife Area developed in consultation with the ODNR and COE. Rockies Express shall also include a plan for maintaining safe public access through the construction area and revegetating the disturbed areas by planting native vegetation. This plan shall be provided to the ODNR and COE.

125. **Prior to the start of construction,** Rockies Express shall file with the Secretary a site-specific crossing (including the HDD crossing of Deer Creek Lake), mitigation, and restoration plan for pipeline construction activities in Deer Creek State Park and Wildlife Area developed in consultation with the ODNR and COE. This plan shall also include provisions for maintaining safe public access through the construction area. This plan shall be provided to the ODNR and COE.

126. **Prior to the start of construction,** Rockies Express shall file with the Secretary a site-specific crossing, mitigation, and restoration plan, developed in consultation with the ODNR, for pipeline construction activities in Perry State Forest and Blue Rock State Forest. A copy of this plan shall be provided to the ODNR.

127. **Prior to the start of construction**, Rockies Express shall work with the owners of White Oak Exotic Hunting Preserve to determine construction timing to minimize disruption to their business.

128. **Prior to the start of construction**, Rockies Express shall develop and file with the Secretary, for review and written approval of the Director of OEP, plans for avoidance or mitigation at sites 23PI365 and 23PI294, and documentation of the Missouri SHPO comments on the plans.

129. Rockies Express shall provide quarterly updates on the consultation among Rockies Express, the Missouri SHPO, interested Native American tribes, and the landowner concerning the human remains identified in Missouri, **until the final disposition of those remains is agreed upon**.

130. Rockies Express shall provide an archaeological monitor **during construction** between Missouri State Road AD and the HDD exit point for the Salt River.

131. Rockies Express shall provide an archaeological monitor **during construction** in the vicinity of the Montezuma Mound Group (11PK1245) from the exit point of the HDD west to a point of inflection at approximately MP 69.7.

132. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval of the Director of OEP, plans for traversing the pre-historic mound sites 11PK89, 11PK1709, and 11PK1733, including measures to avoid and/or protect the sites and documentation of Illinois SHPO's comments on the plan.

133. **Prior to the start of construction**, Rockies Express shall submit research plans to the Indiana SHPO for additional testing in the vicinity of 12FR125b, and file the reports and SHPO comments on the reports with the Secretary for review and written approval by the Director of OEP.

134. Rockies Express shall provide an archaeological monitor **during construction** for work in the vicinity of the former mound site 12SH12 from the Van Pelt Ditch to County Road S 25 E.

135. **Prior to the start of construction**, Rockies Express shall provide the Indiana SHPO the project documents requested to evaluate historic properties and file the Indiana SHPO's comments on the architectural survey reports with the Secretary for review and written approval by the Director of OEP.

136. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a treatment plan for the Wabash & Erie Canal and the Indiana SHPO's comments on the plans.

137. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a site-specific construction plan for a horizontal bore to cross the Whitewater Canal. The plan shall be developed in conjunction with the Indiana SHPO and shall describe how the archaeological features associated with the Whitewater Canal would be avoided.

138. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, the assessment of effects of the project on the NRHP-listed Hunt-Forman Farm and, as necessary, a treatment plan for the property and the Ohio SHPO's comments on the assessment and plan.

139. **Prior to the start of construction**, Rockies Express shall provide documentation/alignment sheets showing how site 33FE293 would be avoided or would conduct Phase II evaluation testing. Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, the Phase II report and the Ohio SHPO's comments on the report.

140. **Prior to the start of construction**, Rockies Express shall develop and file with the Secretary plans for avoidance or mitigation and documentation of the SHPO's comments on the plans for sites:

a. Missouri: 23PI365 and 23PI294;

b. Illinois: 11PK1713, 11PK1718, 11PK1599, 11PK1595, 11PK1662, 11PK1664, 11ST544, 11ST547, 11SG1344, and 11M245;

c. Indiana: 12DE745, 12DE772, 12DE809, 12DE811, 12DE815, 12FR310, 12FR336, 12FR343, 12FR355, 12FR360, 12FR377, 12FR394, 12FR395, 12FR398, 12FR401, 12FR403, 12HE347, 12JO536, 12MG402, 12PM362, 12VE586; and

d. Ohio: 33CN433, 33FA1740, 33PE362, 33PE176, 33PE351, 33PE175, 33PE794, 33WA797, and 33BU1019.

141. Rockies Express shall defer construction and use of facilities, staging, storage, temporary work areas, and new or to-be-improved access roads until:

a. Rockies Express files with the Secretary all additional required cultural resource inventory and evaluation reports, avoidance or treatment plans, and any additional information that the SHPOs have requested;

b. Rockies Express files with the Secretary copies of the appropriate SHPO comments on all reports and plans;

- c. the Advisory Council on Historic Preservation has been provided an opportunity to comment on whether any historic properties would be adversely affected; and
- d. the Director of OEP reviews and approves all reports and plans and notifies Rockies Express in writing that it may proceed with treatment or construction.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: “**CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE.**”

142. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a plan indicating measures Rockies Express would implement within the Indianapolis, Indiana and Cincinnati-Hamilton, Ohio-Kentucky-Indiana non-attainment regions to demonstrate and monitor compliance with the Tier 2 and Tier 3 emissions assumed in Rockies Express’ construction emission calculations, as well as ensure emissions would remain under the General Conformity Thresholds.

143. **Prior to the start of construction**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, updated site-specific plans for each HDD entry or exit site where it proposes to implement noise mitigation as shown in Table 4.11.2-1 of the final EIS. The updated plans shall identify any noise walls or barriers, equipment locations, equipment barriers, or any other mitigation measures.

144. **Prior to the start of construction**, Rockies Express shall file a noise analysis with the Secretary, for review and written approval by the Director of OEP, for all HDD sites that are not evaluated in the final EIS. This analysis shall identify any NSAs within one-half mile of the HDD entry or exit location and the proposed length of time HDD activities would occur. The analysis shall also include background noise levels and estimated drilling noise contributions at the nearest NSAs at each HDD entry and exit location with NSAs within one-half mile, along with any measures Rockies Express will implement to control noise from the HDDs.

145. Rockies Express shall make all reasonable efforts to ensure its predicted noise levels from the Arlington, Bertrand, Mexico, Blue Mound, Bainbridge, Hamilton, and Chandlersville Compressor Stations are not exceeded at nearby NSAs and file noise surveys showing this data with the Secretary **no later than 60 days after placing each of the compressor stations in service.** However, if the noise attributable to the operation of the Arlington, Bertrand, Mexico, Blue Mound, Bainbridge, Hamilton, or Chandlersville Compressor Stations at full load exceeds a day-night equivalent sound level of 55 decibels on the A-weighted scale at any nearby NSAs, Rockies Express shall file a report on what changes are needed and shall install additional noise controls to meet

the level **within one year of the in-service date**. Rockies Express shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days after it installs the additional noise controls**.

146. Rockies Express shall file with the Secretary and the Sny Levee District the survey results for levee settlement monitoring **every six months for a period of five years** after installation over the levee.

147. **Prior to the start of construction from MPs 621 to 635**, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, a construction and operations plan, developed in collaboration with the Murray Companies, for the segment of the pipeline that traverses the coal mining reserves held by the Murray Companies. The plan shall address the primary concern of maintaining pipeline integrity and operation while not impeding the mining operation. If the collaboration does not culminate in a plan, Rockies Express shall file with the Secretary, for review and written approval by the Director of OEP, an alternative pipeline route that avoids the Murray Companies' coal reserves.