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February 24, 2017

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

Mr. Terry Turpin, Director
Office of Energy Projects
Federal Energy Regulatory Commission
Washington, D.C. 20426
Via filing in Docket CP15-93-0000

RE: Rover Pipeline LLC, Docket No. CP15-93-000
(Objection re noncompliance with mitigation commitment)

Dear Ms. Bose and Mr. Turpin:

We're writing on behalf of the Sierra Club and the Freshwater Accountability Project, both Intervenor in this certificate proceeding, to note serious discrepancy in mitigation commitments and implementation as expressed in the Final Environmental Impact Statement ("FEIS") and the construction aims of Rover Pipeline LLC.

There is a contradiction between the promised and planned pumping engines to be used in the compressor stations for the ET Rover pipeline project slated for construction in Ohio and Michigan. The FEIS clearly states that turbine engines would be used for pumping capacity in the nine (9) slated compressor stations, whereas the February 2, 2017 "Order Granting Certificates" ("certificate order") specifically orders reciprocating engines. The aim of using turbines was to avoid causing a "pulsing" vibration to emanate from the compressor stations, which can be very distracting to nearby residents.

In the February 2, 2017 FERC "Order Granting Certificates," the Commission approved construction of the following compressor station facilities:

- the 14,205 horsepower (hp) Sherwood Compressor Station located at milepost 0.0 on the Sherwood Lateral in Doddridge County, West Virginia, consisting of *three natural gas-fired reciprocating compressor units*;
- the 18,940 hp Seneca Compressor Station located at milepost 0.0 on the Seneca

Lateral in Noble County, Ohio, consisting of *four natural gas-fired reciprocating compressor units*;

- the 11,245 hp Clarington Compressor Station located at milepost 0.4 on the Clarington Lateral in Monroe County, Ohio, consisting of *three natural gas-fired reciprocating compressor units*;

- the 7,100 hp Majorsville Compressor Station located at milepost 1.1 on the Majorsville Lateral in Marshall County, West Virginia, consisting of *two natural gas-fired reciprocating compressor units*;

- the 15,980 hp Cadiz Compressor Station located at milepost 0.0 on the Cadiz Lateral in Harrison County, Ohio, consisting of *four natural gas-fired reciprocating compressor units*;

- the 5,175 hp Burgettstown Compressor Station located at milepost 0.0 on the Burgettstown Lateral in Washington, Pennsylvania, consisting of *three natural gas-fired reciprocating compressor units*;

- the 42,190 hp Mainline Compressor Station 1 located at milepost 18.8 on Main Lines A and B in Carroll County, Ohio, consisting of *six natural gas-fired reciprocating compressor units*;

- the 38,745 hp Mainline Compressor Station 2 located at milepost 77.3 on Main Lines A and B in Wayne County, Ohio, consisting of *six natural gas-fired reciprocating compressor units*;

- the 34,010 hp Mainline Compressor Station 3 located at milepost 127.9 on Main Lines A and B in Crawford County, Ohio, consisting of *five natural gas-fired reciprocating compressor units*; and

- the 25,830 hp Defiance Compressor Station located at milepost 0.0 on the Market Segment in Defiance County, Ohio consisting of *four natural gas-fired reciprocating compressor units*.

“Order Granting Certificates,” 2/2/2017 at ¶ 10 (pp. 5-6) (Emphasis supplied).

However, in the Final Environmental Impact Statement, the Commission unequivocally stated that turbine engines, not reciprocating engines, would be installed at all compressor stations:

Operations of Rover’s pipeline facilities would not typically cause noise impacts, except during pipeline blowdown events at mainline valve sites, which are discussed below. However, we received comments about potential impacts on residents due to low frequency sound waves generated by high pressure natural gas flowing through a pipeline. The type of noise that commenters are concerned about are typically associated with compressor stations that include reciprocating engines. This type of compressor unit has been reported to result in a “thumping” or “pulsing” effect along the pipeline downstream from the compressor station. There are mitigation measures that can be installed at these types of compressor stations. *However, the proposed compressor units at all compressor stations are turbines. Therefore, the effect commenters are concerned about would not occur.*

(FEIS pp. 4-252 - 4-253) (Emphasis added).

Rover deviated from the express commitment in the FEIS when it filed its applications for compressor permits with the Ohio Environmental Protection Agency. Rover has apparently obtained Ohio EPA Clean Air Act permits allowing the use of gas-fired reciprocating compressor units.

We believe that Rover must be held to the FEIS commitment under NEPA regulations, and that only in the rarest of circumstances should any change to that commitment be allowed.

In discussing mitigation of noise from Rover's planned compressor stations in the "Order Granting Certificates," the Commission asserted that "[b]ased on the analyses conducted, *mitigation measures proposed*, and the required noise surveys, we agree with the final EIS's conclusion that operation of the Rover Pipeline Project would not result in significant noise impacts on residents and the surrounding communities." *Id.* at ¶ 230 (p. 81). (Emphasis added). Thus express consideration was given to the mitigation measure of using turbine instead of reciprocating engines.

We consider the Commission's final Order of February 2, 2017 to comprise the final "record of decision" (ROD) required by the National Environmental Policy Act. According to the Council on Environmental Quality's discussion of ROD commitments found in the "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," 46 Fed. Reg. 18,026, Q. 34c (March 23, 1981), "Lead agencies 'shall include appropriate conditions [including mitigation measures and monitoring and enforcement programs] in grants, permits or other approvals' and shall 'condition funding of actions on mitigation.'" 40 C.F.R. § 1505.3. "Any such measures that are adopted must be explained and committed in the ROD." *Id.*

Moreover, the ROD must state whether all practicable mitigation measures have been adopted, and if not, why not. 40 C.F.R. § 1505.2©. The ROD must identify the mitigation measures and monitoring and enforcement programs that have been selected and plainly indicate that they are adopted as part of the agency's decision. If the proposed action is the issuance of a permit or other approval, the specific details of the mitigation measures shall then be included as appropriate conditions in whatever grants, permits, funding or other approvals are being made by the federal agency. 40 C.F.R. § 1505.3 (a), (b).

The CEQ is clear on the question of enforceability of mitigation commitments appearing in RODs: "Pursuant to generally recognized principles of federal administrative law, agencies will be held accountable for preparing Records of Decision that conform to the decisions actually made and for carrying out the actions set forth in the Records of Decision. This is based on the principle that an agency must comply with its own decisions and regulations once they are adopted. Thus, the terms of a Record of Decision are enforceable by agencies and private parties. *A Record of Decision can be used to compel compliance with or execution of the mitigation measures identified therein.*" CEQ "Forty Most Asked Questions," *supra*, Q. 34d. (Emphasis

added).

If it is the contention of FERC that the “Order Granting Certificates” comprises the ROD in this situation, then the Commission has not provided a thorough explanation as to why turbines were rejected as mitigation for the reciprocating engine noise problem.

Please advise immediately that FERC will require turbines instead of reciprocating engines. Otherwise, we will be forced to consider what additional legal steps should be taken to enforce the unequivocal commitment to turbine engines expressed in the NEPA document.

Thank you.

/s/ Terry J. Lodge, Esq.

Terry J. Lodge

Counsel for Freshwater Accountability Project

/s/ Ryan Talbott, Esq.

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