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BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the Application)
of Buckeye Wind LLC for a Certificate)
to Install Numerous Electricity) Case No. 08-666-EL-BGN
Generating Wind Turbines in)
Champaign County to be Collected at)
an Electric Substation in)
Union Township,)
Champaign County, Ohio)

MOTION FOR WAIVER

Pursuant to Section 4906.06(A)(6), Revised Code and Rule 4906-1-03 of the Ohio Administrative Code, Buckeye Wind LLC ("Buckeye Wind" or "the Applicant"), moves the Ohio Power Siting Board ("Power Siting Board") to grant waivers from Section 4906.06(A)(6), Revised Code and from Chapter 4906-13 of the Ohio Administrative Code for the reasons detailed in the following Memorandum in Support.

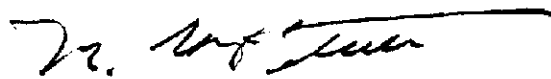
Buckeye Wind will be filing an application for a generation facility of more than 50 MW in the above styled docket. The application will be filed under the Power Siting Board's current rules and although the promulgated rules for wind farms are not yet effective, the application will address requirements under the proposed rules to the extent possible. The waivers Buckeye Wind seeks herein are primarily based on the unique nature of a wind generation facility and the extensive development work that is required prior to operating the facility. The requested waivers will not impact the Power Siting Board's review and analysis of the proposed generation facility.

WHEREFORE, Buckeye Wind respectfully requests that the Power Siting Board grant a waiver from the one-year notice provision of Section 4906.06(A)(6), Revised Code, from the requirement of having to file fully developed Site Alternative Analyses under Rule

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4906-13-03 of the Ohio Administrative Code and, waivers in part or in whole from Rules 4906-13-04(A)(1)(c); 4906-13-04(A)(3) and (A)(3)(g); 4906-13-04(A)(4); 4906-13-04(B)(2); 4906-13-04(B)(2)(b) and (B)(2)(d); 4906-13-04(B)(2)(i); 4906-13-05(B)(1), (B)(2), (B)(3), (C)(2) and (C)(3); 4906-13-07(A)(1); 4906-13-07(B)(1)(d); 4906-13-07(B)(1)(e); 4906-13-07(B)(2)(a); and 4906-13-07(F)(1) of the Ohio Administrative Code.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. Introduction

Buckeye Wind, LLC, a wholly owned subsidiary of EverPower Wind Holdings, Inc. (hereafter referred to as “the Applicant” or “Buckeye Wind”) is proposing to construct a wind-powered electric generation facility located in Champaign County. The energy generated at the wind farm, hereafter referred to as the (“Project” or the “Facility”) will collect to an electric substation in Union Township, Champaign County. The proposed Project consists of 70 wind turbine generators and associated infrastructure (i.e., access roads, electrical interconnect, construction staging areas, an operations and maintenance facility, and the substation). The electricity generated by the Facility will be transferred to the transmission grid operated by PJM Interconnection for sale at wholesale.

Through this motion, Buckeye Wind is seeking waivers from certain requirements of the Revised Code and current administrative rules governing power siting. These waivers are necessary given the unique nature of a wind generation facility and the extensive development work that is required prior to operating such a facility. For example, where a typical coal-fired generation facility may be located on 50 to 60 acres of land, the wind generation facility proposed by Buckeye Wind will be located across six townships in Champaign County. Therefore, a waiver is being sought to provide certain maps of 1:12,000 scale rather than 1:4,800 scale. As well, a waiver is being sought from the site alternative analysis requirement given the unique siting process for wind generation facilities.

Accordingly, as more fully set forth below, Buckeye Wind seeks a waiver from the one-year notice provision of Section 4906.06(A)(6), Revised Code, from the requirement of having to file a fully-developed Site Alternative Analyses under Rule 4906-13-03 of the Ohio

Administrative Code and, waivers in part or in whole from Rules 4906-13-04(A)(1)(c); 4906-13-04(A)(3) and (A)(3)(g); 4906-13-04(A)(4); 4906-13-04(B)(2); 4906-13-04(B)(2)(b) and (B)(2)(d); 4906-13-04(B)(2)(i); 4906-13-05(B)(1), (B)(2), (B)(3), (C)(2) and (C)(3); 4906-13-07(A)(1); 4906-13-07(B)(1)(d); 4906-13-07(B)(1)(e); 4906-13-07(B)(2)(a); and 4906-13-07(F)(1) of the Ohio Administrative Code.

II. Section 4906.06(A)(6), Revised Code

Section 4906.06(A)(6), Revised Code indicates that an application filed with the Ohio Power Siting Board ("Power Siting Board") must be filed not less than one year nor more than five years prior to the planned date of commencement of construction. Either period may be waived by the Board for good cause shown. The one-year requirement was associated with electric generation facilities of public utilities -- the financial risk of which under Section 4909.18, Revised Code and the monopoly franchise provision of Section 4933.81, Revised Code rests with the general public who are served in the franchised service area. Since the financial risk of merchant generation facilities under Senate Bill 3 and Senate Bill 221 rest with the non-utility owner, the year time frame to assess the public need for the facility is not required. The Power Siting Board for that reason has routinely waived the one-year requirement for merchant generation facilities.¹

The Applicant intends to begin construction of the wind-powered electric generation facility located in Champaign County as soon as it is authorized by the Power Siting Board. Without the waiver of the one-year notice provision, Buckeye Wind will not be

¹ See In re: Rolling Hills Generating, LLC, a Subsidiary of Dynegy Power, Case No. 00-1616-EL-BGN, Entry, December 8, 2000; In re: Sun Coke Company, a Division of Sunoco, Case No. 04-1254-EL-BGN, Entry, January 21, 2005; and In re: Middletown Coke Company, a Subsidiary of Sun Coke Energy, Case No. 08-281-EL-BGN, Entry, May 28, 2008.

permitted to commence construction as soon as possible. Good cause exists for granting the requested waiver.

III. Rule 4906-13-03 of the Ohio Administrative Code (Site Alternatives Analyses)

Rule 4906-13-03 of the Ohio Administrative Code requires an applicant to conduct a site selection study prior to submitting an application for an electric generation facility. Once again for merchant plants where the owner/operator is not a public utility with an obligation to serve, there is not a need for an alternate site to fulfill the duty of the utility to own or construct generation capacity sufficient to meet the required demand of the franchised service area. Thus the Commission has routinely granted this waiver for independent merchant generation facilities.²

The current rules were designed for conventional power plants with a centralized footprint. Wind generation facilities, by their nature, are constrained on the location and various macro and micro siting factors. Given the unique nature and constraints associated with the siting of wind-powered electric generation facilities, the Applicant has requested a waiver of the requirement for a fully developed site alternative analysis.

In lieu of an alternative site analysis, Buckeye Wind will provide information which describes its site selection process as permitted under Proposed Rule 4906-17-04, along with the associated siting constraints and requirements in relation to Project objectives. The Applicant has provided information setting forth the description and rationale for selecting the study area, a map of the Project area and general wind resource map, a list and description of siting criteria, a description of siting factors and constraints including land use constraints, noise constraints, wind resource constraints, wetland constraints, agricultural constraints, and

² Id.

landowner considerations. The Applicant will also provide a description of the Project area selection process in the application.

The information described above provides a qualitative assessment of the site selection process on a macro and micro level. Such analysis/development activity was conducted over the course of multiple years. In addition, there were significant landowner agreements and site-specific pre-construction assessments that were required for this utility scale wind project. To obtain additional viable Project alternatives, extensive certification tasks would have to be completed for each alternative.

It is simply not practicable to procure land contracts, perform environmental and engineering studies, enter into (and progress through) multiple interconnection permit processes, and conduct community outreach and education campaigns for additional Project alternatives. Thus, the Applicant respectfully requests that the Power Siting Board grant the requested waiver from the requirement of providing a fully-developed site alternative analysis. To the extent necessary, the Applicant respectfully requests that this waiver also apply to any information regarding alternative sites that may be required under Chapter 4906-13, including Rules 4906-13-02(A)(1) and 4906-13-04(A). The Applicant will provide any additional information requested by the Staff of the Power Siting Board that relates to the Project area site selection process.

IV. Rule 4906-13-04(A)(1)(c) of the Ohio Administrative Code (Utility Corridors and Residential, Commercial and Industrial Buildings and Installations)

Rule 4906-13-04(A)(1)(c) requires the applicant to provide a map containing a five-mile radius from the proposed facility and showing utility corridors. The Applicant has provided a map showing electric transmission lines on the map but was unable to find information other than from the Public Utilities Commission of Ohio showing natural gas lines in Champaign

County. Attached to this Motion for Waiver is a copy of the natural gas transmission system in Ohio map dated 1998. It is published by the State of Ohio. It shows that there are no gas transmission lines in Champaign County, only three Meter Stations. Before excavation activities, the Applicant will confirm the absence of gas transmission lines through coordination with Ohio Utilities Protection Service and the Public Utilities Commission of Ohio.

The Applicant respectfully requests that the Power Siting Board grant a waiver from having to supply a map containing natural gas utility corridors on it.

V. Rule 4906-13-04(A)(3) and A(3)(g) of the Ohio Administrative Code (Map of Scale 1:4,800 and Vegetative Cover that May be Removed During Construction)

Rule 4906-13-04(A)(3) of the OAC requires the Applicant to submit a map of scale 1:4,800 showing in part, the vegetative cover that may be removed during construction. The Applicant's map is scaled at 1:12,000 given the large footprint of the project area and as permitted under Proposed Rule 4906-17-05(A)(3). The map also does not portray vegetative cover to be removed, again given the extensive size of the project area and the mapping scale used. However, the Applicant will provide a description of the vegetative cover and will quantify the vegetation that may be disturbed during construction in the application. Accordingly, the Applicant respectfully requests a waiver from the requirement of having to use a scale of 1:4,800 and to depict on the map the vegetative cover that may be removed during construction.

VI. Rule 4906-13-04(A)(4) of the Ohio Administrative Code (Cross-Sectional View and Test Borings)

Rule 4901-13-04(A)(4) of the OAC requires the Applicant to provide a map and a corresponding cross-sectional view showing the location of test borings. Figure 4 of the application will depict the proposed Facility in relation to geological features including bedrock contours and karst areas. The mapping was developed using 2006 OGRIP aerial photographs.

This map does not contain cross-sectional views and locations of test borings. However, the Applicant will provide a cross-sectional view and the location of test borings at a later date. The locations of the test borings will be at appropriate turbine sites as determined necessary by the geotechnical engineer. Road borings will be conducted approximately every one thousand feet along county and township roads that will be used for transport of Project components. These road borings will allow the Applicant and County Engineer to determine suitability of the roads and the appropriate steps to ensure the roads are returned to pre-construction quality.

After the geotechnical engineer has reviewed all available desktop information the engineer will determine the number of borings to be drilled for the initial geotechnical investigation. These borings will also be taken at the proposed substation location. The borings will extend to the proposed depth or competent bedrock, whichever is encountered first.

The Applicant respectfully requests that the Power Siting Board grant a waiver from the requirement that the map must contain a cross-sectional view and location of the test borings at this time. The Applicant will provide responsive information to this requirement and other related data requests from the Staff upon availability of that data.

VII. Rule 4906-13-04(B)(2) of the Ohio Administrative Code (Map of Scale 1:4,800)

Rule 4906-13-04 (B)(2) of the OAC requires the Applicant to submit a map of scale 1:4,800. The Applicant's map (Figure 1) is scaled at 1:12,000 given the large footprint of the project area and as permitted under Proposed Rule 4906-17-05(B)(2). Accordingly, the Applicant respectfully requests a waiver from the requirement of submitting a map of 1:4,800 scale.

VIII. Rule 4906-13-04(B)(2)(b) and (B)(2)(d) of the Ohio Administrative Code (Layout-Fuel, Waste and Other Storage Facilities /Water Supply and Sewage Lines)

Rule 4906-13-04(B)(2)(b) and (B)(2)(d), of the OAC requires that the Applicant supply a map of the proposed electric power generating plant site, showing fuel, waste and other storage facilities and water supply and sewage lines. Proposed Rule 4906-17-05(B)(2) does not require these items. The Applicant's proposed wind generation facility will generate electricity without burning fuels, will generate clean, emission-free electricity without releasing airborne pollutants and will generate electricity without the use of water. The only potential storage facility will be an operations and maintenance building ("O&M building") that may house turbine blades and other spare parts. As well, the O&M building may have a water supply and restrooms for personnel use. At this time, though, the O&M building location has not been identified and a decision has not been made to lease an existing building or to construct a new building. Accordingly, given the unique nature of the proposed generation facility and the limited use of the O&M building for storage and water use, the Applicant respectfully requests that the Power Siting Board waive the requirements of 4906-13-04(B)(2)(b) and (B)(2)(d).

IX. Rule 4906-13-04(B)(2)(i) of the Ohio Administrative Code (Grade Elevations Where Modified During Construction)

Rule 4906-13-04(B)(2)(i) requires the applicant to supply a map of the proposed electric power generating site showing the grade elevations where modified during construction. Unlike a conventional electric generating plant in which a large portion of land must be graded in order to house the facility, the land that must be graded to install a wind turbine is much smaller. A pedestal will be installed to support the wind turbines however, the information on grade elevations modified during construction will not be definitively available until after construction (i.e., as-built surveys). However, the Applicant will generate proposed contours/grade modifications during preparation of the Facility construction drawings, which can be provided to

the Power Siting Board when available. Accordingly, the Applicant respectfully requests the Power Siting Board to waive this requirement.

X. Rule 4906-13-05(B)(1), (B)(2), (B)(3), (C)(2) and (C)(3) of the Ohio Administrative Code (Costs of Various Alternatives and Comparison Between Similar Projects)

Rule 4906-13-05(B)(1) requires the applicant to submit estimates of applicable capital and intangible costs for the various alternatives. Subsection (B)(2) requires the applicant to compare the total costs per kilowatt with the applicant's similar facilities. Subsection (B)(3) requires a tabulation of the present worth and annualized cost for capital costs and any additional cost details as required to compare capital costs of alternates (using the start of construction date as reference date). Subsection (C)(2) requires the applicant to compare the total operation and maintenance costs per kilowatt with the applicant's similar facilities and Subsection (C)(3) of the same rule requires the applicant to tabulate the present worth and annualized expenditures for operating and maintenance costs as well as any additional cost breakdowns as required to compare alternatives.

The Applicant has sought a waiver from the requirement of having to submit a fully developed site alternative analysis. See Section III, infra. Because alternative sites and facilities were not considered, the Applicant seeks a waiver from the requirement of having to submit estimated capital cost information, present worth and annualized capital cost information, and operation and maintenance cost information related to various alternatives. In addition, the Applicant has few similar projects and comparing costs between projects will not be meaningful. Instead, Applicant will compare the national costs prepared by the U.S. Department of Energy Lawrence Berkeley National Laboratory which will provide a better comparison for this project. Accordingly, Buckeye Wind respectfully requests that the Power Siting Board grant this waiver

requiring it to provide cost information associated with alternative sites and facilities and compare costs to similar facilities.

XI. Rule 4906-13-07(A)(1) of the Ohio Administrative Code (Ten Year Population Projection for Townships, Cities and Villages)

Rule 4906-13-07(A)(1) of the OAC requires the applicant to provide ten year projected population estimates for communities within five miles of the proposed site. Projected 2020 population data are only available at the State and County levels. There are no ten year projected estimates for townships, cities, or villages. The Applicant respectfully requests that the Power Siting Board grant a waiver from having to provide ten year population estimates for townships, cities and villages.

XII. Rules 4906-13-07 (B)(1)(d) of the Ohio Administrative Code (Summary of Ecological Impact Studies)

Rule 4906-13-07(B)(1)(d) requires the applicant to provide a summary of any studies which have been made by or for the applicant addressing the ecological impact of the proposed facility. Such surveys and ecological studies of the Project site have been performed and summarized in the application. However, one of the Applicant's consultants, Hull & Associates, Inc., has presented a report which presents the results of a screening for a potential occurrence of threatened or endangered species and plans for additional field surveys in 2009 due to small changes in facility layout and finalization of buried electrical interconnect routes. These additional field surveys must be performed within the growing season in order to produce valid results. To the extent such additional field surveys are completed, the Applicant respectfully requests that the Power Siting Board grant a waiver to allow the Applicant to update the results of its summary of ecological impact studies with the additional field surveys to be performed during the summer months in 2009. To the extent necessary, the Applicant requests that this waiver be applied to the requirements of Rules 4906-13-07(B)(1)(b) and (B)(1)(c),

regarding the results of vegetative survey and the results of an animal life survey. The Applicant will respond to any additional data requests from the Staff that might be formulated from any additional survey information.

XIII. Rule 4906-13-07(B)(1)(e) of the Ohio Administrative Code (List of Species)

Rule 4906-13-07(B)(1)(e) requires the applicant to provide a list of major species from the surveys of terrestrial and aquatic biota. During the 2008 growing season, the Applicant caused to be conducted a field survey of upland woods, upland ridge woods, young woods and riparian woods to focus on whether or not certain protected plant and animal species with potential habitat were located in or near the Project. The survey included inspection by qualified experts (including a botanist and a wildlife expert) along the proposed route of access roads and at proposed turbine locations. In 2009, buried electrical interconnect routes (portions not paralleling access roads), will be the focus of additional survey efforts. These additional survey efforts will also be the subject of the same field study that will be required to be performed during the summer months with respect to the ecological impact studies. See Section XII, *infra*. Re-routing will be implemented as needed to avoid any identified threatened or endangered species. Accordingly, the Applicant respectfully requests a waiver from the Power Siting Board to allow it to perform the additional survey during the summer months in 2009 to focus on buried electrical interconnect routes. The Applicant will respond to any additional data requests from the Staff that might be formulated from this additional survey information.

XIV. Rule 4906-13-07(B)(2)(a) of the Ohio Administrative Code (Estimated Impact of Construction on Undeveloped Areas)

Rule 4906-13-07(B)(2)(a) requires the applicant to estimate the impact of construction on the undeveloped areas (including wetlands according to 4906-13-07(B)(1)(a)(ii)). The Applicant will provide a discussion on the estimated impact of construction on undeveloped areas in the application. As presented in the application, extensive surface water delineation has been completed. However, according to the Applicant's consultant, additional surface water delineation activities will be necessary prior to construction. The only areas not already subject to field delineation occur along portions of buried interconnect routes that do not parallel access roads. Areas of particular concern include points where buried interconnect lines cross map streams, or where they cross woodlands with the potential to contain unmapped wetlands. These areas will be subject to a surface water evaluation prior to construction, and along with the stream/wetland impacts previously described, will be reevaluated and quantified during the State and federal wetland permitting process.

The Applicant respectfully requests that it be granted a waiver from the requirement that the application contain the additional delineation activities that will be necessary prior to construction at those locations that have not yet been surveyed. The Applicant will provide the information that it obtains from such additional field delineation which occurs along portions of buried interconnect routes that do not parallel access roads and will respond to any additional data requests from the Staff that might be formulated from this additional field delineation.

XV. Rule 4906-13-07(F)(1) of the Ohio Administrative Code (Identification of Agricultural District Land)

Rule 4906-13-07 (F)(1) requires the Applicant to identify on a map all agricultural land, and separately, all agricultural district land existing at least sixty (60) days prior to submission of the application located within the proposed facility site boundaries. In January,

2008 and in April, 2009, the Applicant contacted the Champaign County Auditor regarding the agricultural districts. On April 20, 2009 the Champaign County Auditor provided to the Applicant's consultant a spreadsheet containing over 940 county-wide parcels with agricultural district designations. These parcels were mapped and compared to the "agricultural use" layer depicted in Figure 5 of the application, and it was determined that all agricultural district parcels also contain a mapped agricultural use. Therefore, although agricultural districts are not uniquely depicted, they are included as a subset of the mapped agricultural land use areas depicted on Figure 5 in the application. Accordingly, the Applicant requests that the Power Siting Board grant a waiver from the requirement to separately identify agricultural district land as required in this Rule.

XVI. Conclusion

Good cause exists for granting the waivers. Buckeye Wind respectfully requests that the Power Siting Board grant a waiver from the one-year notice provision of Section 4906.06(A)(6), Revised Code, from the requirement of having to file fully developed Site Alternative Analyses under Rule 4906-13-03 of the Ohio Administrative Code and, waivers in part or in whole from Rules 4906-13-04(A)(1)(c); 4906-13-04(A)(3) and (A)(3)(g); 4906-13-04(A)(4); 4906-13-04(B)(2); 4906-13-04(B)(2)(b) and (B)(2)(d); 4906-13-04(B)(2)(i); 4906-13-

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Respectfully submitted,



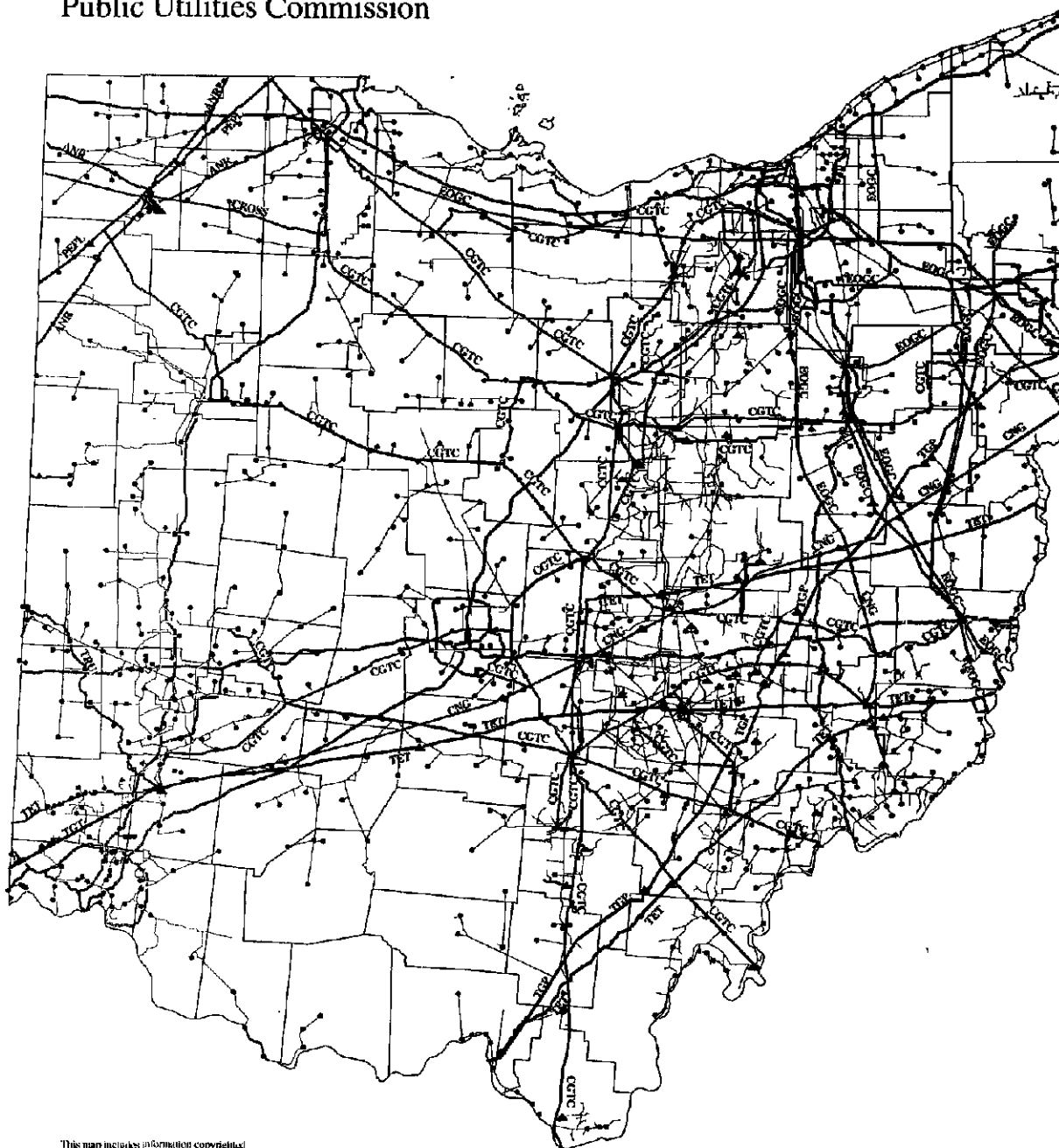
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Natural Gas Transmission System in Ohio 1998

Scale 1:1,500,000

State of Ohio
Public Utilities Commission



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Company Codes

ANR - ANR Pipeline Co.
CGTC - Columbia Gas Transmission Co.
CNG - CNG Energy Co.
CROSS - Crossroads Pipeline Co.
EOGC - East Ohio Gas Co.
PEPL - Panhandle Eastern Pipeline Co.
TET - Texas Eastern Transmission Co.
TGP - Tennessee Gas Pipeline Co.
TGT - Texas Gas Transmission Co.
TRU - Trunkline Gas Co.

• Meter Station

▲ Pump or Compressor Station

▲ Storage

Multiple main line

Single main line

Secondary line

Interstate Highway

September 30, 1998