

Resolution Clarifying Authority of the Ohio Turnpike Commission to Grant Permits for Pooling Agreements and/or for the Extraction of Oil and Gas from the Ohio Turnpike Right of Way

WHEREAS, the Commission has the authority under O.R.C. Section 5537.04 to make or enter into agreements necessary or incidental to the performance of its duties, and to acquire, hold and dispose of property necessary or incidental to the exercise of its powers; and

WHEREAS, Section 5.08 of the Master Trust Agreement between the Commission and Huntington National Bank dated February 15, 1994, authorizes the Commission, by resolution, to dispose of such property or any interest therein that it determines is no longer useful or necessary for the operations or maintenance of the Turnpike System if the Consulting Engineer consents to such action or disposition in writing; and

WHEREAS, the Commission adopted Resolution No. 26-1976 to delegate authority to the Executive Director “to issue permits for the drilling of gas and oil wells and their constituents outside the Turnpike right of way . . . and to collect any royalties due on behalf of the Commission;” and

WHEREAS, the Commission, in an effort to promote the development of new energy sources within the State of Ohio and to update the authority granted under Resolution No. 26-1976, adopted Resolution No. 1-2008 to allow for the Executive Director to take those actions necessary “to execute permits or requests to include Commission property in drilling units for the extraction of oil and gas outside the Turnpike right of way or more than fifty (50) feet from the Turnpike” (pooling agreements); and

WHEREAS, Resolution No. 1-2008 further established that such permits could cause no adverse effect on the operations of the Turnpike System, and that they would require the review and approval of the Consulting Engineer and Engineering Department; and

WHEREAS, the Commission subsequently also adopted Resolution No. 8-2011 under which it further clarified that requests to permit the drilling for oil and gas within the Ohio Turnpike right of way could be granted pursuant to the restrictions of Resolution No. 1-2008, but also subject to the imposition of certain safety and risk management requirements; and

WHEREAS, since the adoption of Resolution Nos. 1-2008 and 8-2011, the legislature adopted a new “Oil and Gas Leasing” law, H.B. 133, enacted on September 30, 2011, and the Commission has received an Informal Opinion dated March 13, 2012, from the Ohio Attorney General’s Office (“AGO”) interpreting whether the newly enacted oil and gas leasing statutes under Ohio Revised Code Chapter 1509 regulate the authority of the Commission to enter into pooling agreements and/or oil or natural gas leases within the Ohio Turnpike right of way; and

WHEREAS, the AGO first concluded that the Commission’s governing statutes under Ohio Revised Code Chapter 5537 do not confer authority on the Commission to enter into either oil or natural gas leases or pooling agreements, nor do they specifically authorize the Commission to convey the state’s oil and natural gas resources, but rather, that such authority emanates from Chapter 1509 of the Ohio Revised Code; and

WHEREAS, the AGO concluded that the Commission is required to comply with Ohio Revised Code Section 1509.73 when: (1) entering into an oil or natural gas lease, or (2) establishing and collecting bid fees, signing fees, or rentals in connection with an oil or natural gas lease; and further that the Commission is required to comply with: (1) Ohio Revised Code Section 1509.77 when entering into any new pooling agreements to form drilling units, and (2) that all pooling agreements in existence prior to the enactment of Ohio Revised Code Section 1509.77 were governed by Ohio Revised Code Sections 1509.24-27; and

WHEREAS, the AGO further concluded that pooling agreements entered into by the Commission are not subject to the requirement that revenues be transferred to the state treasury either before or after the amount of System Pledged Revenues exceeds 200% of the Annual Debt Service Requirement under Section 4.16 of the Commission’s Master Trust Agreement, however, for any agreements that may be entered into for oil and gas leasing in the

Commission's right of way, as previously authorized by Resolution 8-2011, royalty payments from such leases may be retained only until the amount of System Pledged Revenues exceeds 200% of the Annual Debt Service Requirement, but thereafter, after conducting its annual review of its financial condition as required by Ohio Revised Code Section 5537.17(E) and Section 4.04(b) of the Master Trust Agreement, the Commission must remit those revenues in excess of that amount to the state treasury, and further any rentals, signing fees, and bid fees received by the Commission under an oil or natural gas lease may not be retained by the Commission, and must be forwarded immediately to the state treasury; and

WHEREAS, it is the desire of the Commission to clarify the authority previously granted under Resolution Nos. 26-1976, 1-2008 and 8-2011 to the Executive Director to enter into pooling agreements or to permit the drilling for oil and gas within the Ohio Turnpike right of way.

NOW, THEREFORE, BE IT

RESOLVED that the Commission hereby authorizes the Executive Director and General Counsel to take those actions necessary to effectuate this Resolution, and to permit the continued negotiation and execution of permits that allow pooling agreements or the drilling for oil or gas within the Ohio Turnpike right of way subject to those restrictions previously established pursuant to Resolution Nos. 26-1976, 1-2008 and 8-2011, as well as the restrictions established under newly enacted provisions of Chapter 1509 of the Ohio Revised Code.

(Resolution No. 45-2012 adopted October 15, 2012)