Alliance for Energy Choice

Senate Energy and Public Utilities Committee
Substitute House Bill 6
June 18, 2019

Chairman Wilson and members of the Senate Energy and Public Utilities Committee, thank you for the opportunity to provide this written testimony pertaining to Substitute House Bill 6 (Sub. HB 6). The members of the Alliance for Energy Choice are opposed to this legislation.

The Alliance for Energy Choice is an Ohio non-profit corporation that seeks to promote fairness and competition in electric utility service. The Alliance advocates for free-market solutions that will ensure an adequate and fairly priced supply of electric power to Ohio's residents, businesses, and industries. The Alliance also advocates for policies that do not favor one supplier or one form of energy over another.

As you know, this legislation creates the Ohio Clean Air Program (OCAP) to compensate generation facilities deemed to be "Clean Air Resources," which are defined as electric generating facilities that:

- are in this state and fueled by nuclear power
- are in this state and use or will use solar energy as the primary energy source and that have obtained a certificate from the Ohio Power Siting Board prior to June 1, 2019
- have a historical or future ability to significantly contribute to the air quality of the state
- are a major utility facility in this state [50 megawatts (MWs) and larger]
- are integrated into the PJM Interconnection

Clean Air Resources will be granted a "Clean Air Credit" for every megawatt hour (MWh) of electricity produced on a monthly basis and each credit will be valued at a seemingly arbitrary $9.00 for each program year. Clean Air Credits will be subject to a price adjustment for each upcoming program year in order to reduce the price of each credit equal to the "Market Price Index," which is defined as the projected energy prices, determined using futures contracts for the PJM AEP-Dayton Hub and projected capacity prices, determined using PJM's "Rest-of-RTO" market clearing price minus the "strike price," which is also seemingly arbitrarily set at $46.00/MWh.

The legislation also requires that remittances from the OCAP Fund be disseminated in the following order of priority:

- Clean Air Resources fueled by nuclear power
- Clean Air Resources that use or will use solar energy
- electric distribution utilities (EDUs) for reimbursement of transition costs associated with their past compliance with the state's Renewable Portfolio Standards

As written, the legislation requires state-sanctioned subsidies for only those electric generating facilities that are fueled by nuclear power or that use solar energy. According to the attached map that outlines the installed electric generating capacity of Ohio's major utility facilities as of January 2019, the state's nuclear and solar resources generate a total of 2,237 MWs, all of which is accounted for by the state's two nuclear generation facilities as currently there are not any utility scale solar facilities located or operating in Ohio.

By contrast, the remainder of Ohio's major utility facilities (coal, gas, waste gas/heat, biomass, hydro, and wind) currently have an installed capacity of 28,836 MWs. Thus, of the 31,073 MWs of total installed generating capacity currently operating in Ohio, Sub. HB 6 mandates that 93% of it be placed at a direct economic disadvantage to the other 7% based solely on an individual electric generating facility's fuel source.

This is anti-competitive and unfair to the overwhelming majority of the wholesale and retail electricity market participants in the state. It will also have far-reaching detrimental impacts when it comes to unnecessary future electricity cost increases for Ohio's residential, commercial, and industrial consumers.

To make matters worse, the bill allows an EDU to continue recovering, through 2030, the costs associated with its ownership stake in a "National Security Generation Resource," which is defined as all generating facilities owned directly or indirectly by a corporation that was formed prior to 1960 by investor-owned utilities for the original purpose of providing capacity and electricity to the federal government for use in the nation's defense or in furtherance of national interests. The term includes the Ohio Valley Electric Corporation (OVEC).

Guaranteeing cost recovery for a decade to these two aged, inefficient coal plants, one of which is located in Indiana, rewards poor operations and performance and punishes those operators and facilities that have maximized their efficiencies and competitiveness. The Ohio EDUs willingly and proactively entered into the existing ownership agreement with the various other OVEC owners and agreed to operate the plants in the open market once the federal government contract expired in 2003. Thus, Ohioans should not be saddled with these unnecessary costs and competitors should not be directly disadvantaged in order to cover the losses resultant from bad business decisions other companies made in the past.

To be clear, no member of the Alliance for Energy Choice is currently receiving nor advocating for any future ratepayer-funded financial assistance for its electric generating facilities or retail operations in Ohio. The creation of the OCAP Fund will collect just short of $200 million annually from your constituents and the Clean Air Credit is inexplicably valued at $9.00 per MWh. Those facts are deeply concerning as the fund and the credits will both serve to monetarily reward inefficient, uncompetitive facilities and financially punish those facilities that have invested billions of dollars of private capital to maximize their efficiencies and competitiveness in the marketplace. A marketplace in which investment decisions were based on existing rules and regulations that were put in place to ensure a level playing field and equal treatment under the law for all market participants.

Providing subsidies to uncompetitive electric generating facilities distorts the market and increases the price of electricity. Subsidies will also create a perverse incentive for future anti-competitive behavior from those facilities and companies receiving OCAP funds, Clean Air Credits, and OVEC cost recovery.

PJM's F. Stuart Bresler was very clear in his April 9, 2019 testimony to the House Energy and Natural Resources Committee when he said, *"...what is clear not only in this State but across the PJM footprint is that efforts to subsidize less competitive plants will result in higher power prices for Ohioans."*[1]

Encouraging growth through free-market principles and policies in the electric generation sector will help keep Ohio's electricity rates low and foster an environment ripe for economic development. Such an environment will also naturally attract further investment in Ohio's existing electric generating facilities as well as incentivize the construction of new facilities in the state; all of which have been and will continue to be funded through private capital investment with no risk whatsoever to Ohio's ratepayers.

As F. Stuart Bresler also recently testified in Ohio, *"Such actions have the potential to roll back the progress and stability that the markets have facilitated. Such actions could prevent the building of more efficient and cost-effective plants... Such actions, according to the independent market monitor who oversees PJM's market operations, could result in an increase in costs upwards of $3.8 billion across the PJM footprint."*[2]

We have heard conflicting reports regarding the financial health of the Davis-Besse and Perry nuclear facilities. Some experts have claimed the plants are losing money and in need of an immediate subsidy to keep them from going under. Other experts have asserted that the plants are in fact profitable and not in need of a bailout. It would seem at the very least a direct audit requirement of the FirstEnergy Solutions books is warranted in order to determine what the company's actual need, if any, for financial assistance truly is prior to any further legislative action on the issue taking place. It remains puzzling and troubling to us that the company, which is still in bankruptcy, has been unwilling to share that vital information with Ohio government officials to this point. If Ohioans are expected to foot an almost $1.2 billion dollar bill it is more than reasonable that the company and its bondholders, who stand to benefit greatly from such a handout, should be subjected to a rigorous review of their finances before hundreds of millions of ratepayer dollars begin flowing to them without any proof it is necessary and advisable.

Over the years, our members and our competitors have invested billions of dollars of private capital into Ohio's electric generation sector and retail electricity market because of the state's historically robust economy, open access to consumers, and fair regulatory environment.

We urge the Ohio Legislature to continue to support market forces, free from meddling and interference, as doing so has created ideal conditions to attract private investment and allow businesses and consumers to thrive. Enactment of Sub. HB 6 as currently constituted will fundamentally alter and irreparably harm the pro-market, pro-competition environment in which we originally invested and continue to invest.

As prudent investors, our members constantly assess which states, electric generation sectors, and retail electricity markets are most conducive to our future investment and often make funding decisions based on potential major policy shifts as our capital seeks the path of least resistance and minimal risk.

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[1] *Statement of F. Stuart Bresler, III on Behalf of PJM Interconnection*. Pg. 10. Ohio House Energy and Natural Resources Committee: April 9, 2019.

[2] *Statement of F. Stuart Bresler, III on Behalf of PJM Interconnection*. Pg. 10. Ohio House Energy and Natural Resources Committee: April 9, 2019

Our member companies employ hundreds of Ohio residents and those employees struggle to understand why their jobs are seemingly less important in the eyes of Ohio legislators than those of the employees at the state's two nuclear generation facilities. Ohio has recently experienced the closure of other electric generation facilities and major manufacturing operations, yet no legislative assistance was offered to any of the thousands of employees who lost their jobs as a result. Ironically, Sub. HB 6 requires those same people to use a portion of their savings or unemployment benefits to keep others employed.

Our analysis of this bill has left us questioning the direction of Ohio's energy policy and how, if at all, our companies and their respective investment dollars can continue to fit into the state's energy future in a mutually beneficial manner. The creation of adverse market conditions in Ohio would cause our capital to flow to neighboring states in PJM or to other markets across the country rather than continue to be invested in this state.

We appreciate this opportunity to submit written testimony on Sub. HB 6. As always, we welcome the opportunity to be a resource to the Ohio Senate as it strives to create the best possible energy policies for the State of Ohio. Please do not hesitate to contact us if you have any questions or would like further information regarding this document or the Alliance for Energy Choice.

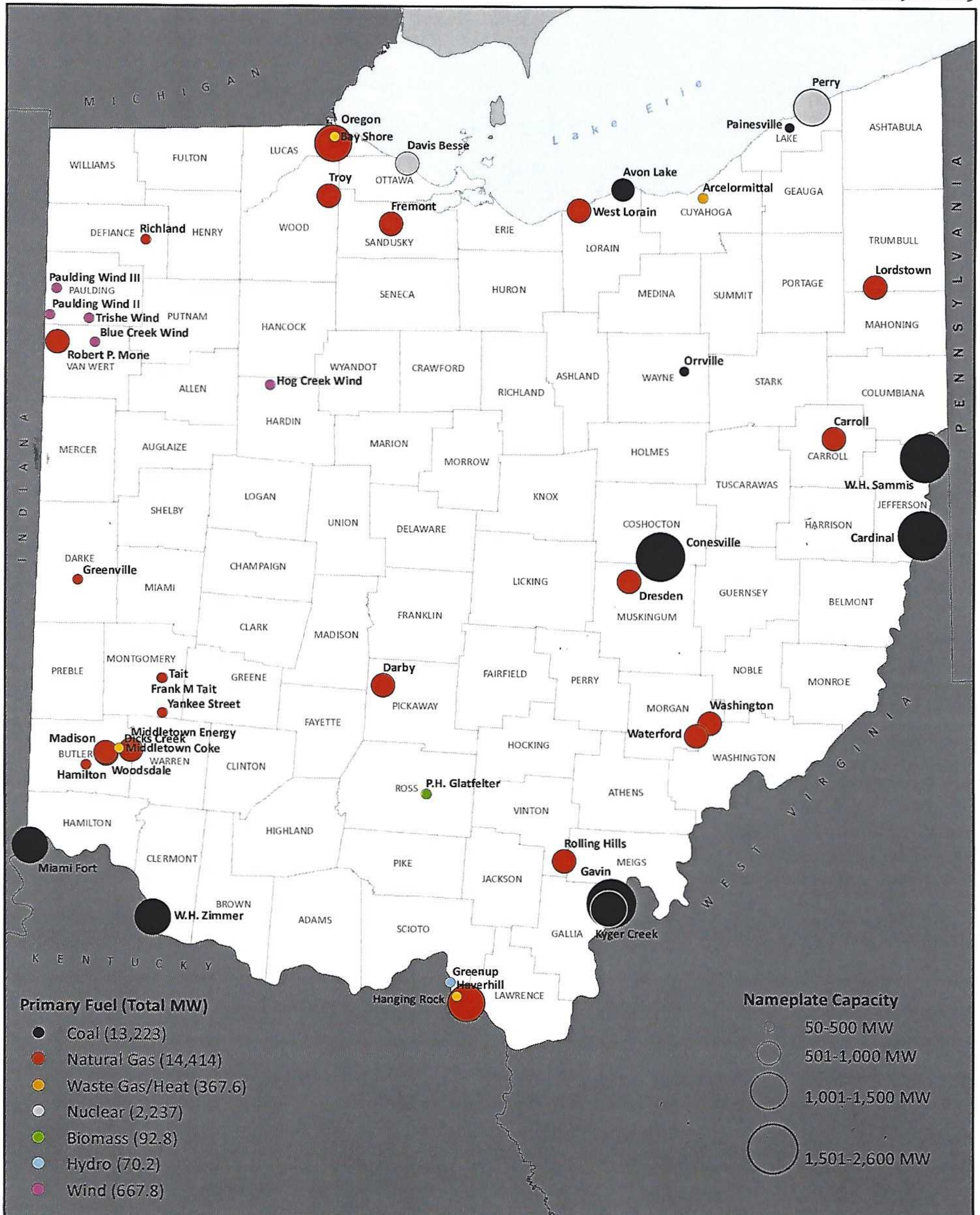
Alliance for Energy Choice

The Alliance for Energy Choice membership currently includes Calpine, Eastern Generation, The Energy Professionals of Ohio, LS Power, and Vistra Energy.

Ohio | Public Utilities Commission

Ohio Electric Generation Facilities 50 MW and Up

As of Jan. 2019



Notes: Includes all facilities with a nameplate capacity greater than 50 MW. Operational facility data source is the Energy Information Administration, Form EIA-860, January 2019. Map produced on April 3, 2019.