



Senate Energy and Public Utilities Committee
Substitute House Bill 6
June 27, 2019

Chairman Wilson and members of the Senate Energy and Public Utilities Committee, thank you for the opportunity to yet again provide written testimony on Substitute House Bill 6 (Sub. HB 6). The members of the Alliance for Energy Choice remain opposed to this latest version of the 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.

The bill now allows "Qualifying Nuclear Resources" and "Qualifying Renewable Energy Resources" to be compensated out of market for every megawatt hour (MWh) of electricity produced on a monthly basis. Each nuclear resource will be paid \$9.00/MWh and each renewable energy resource will be paid \$3.00/MWh out of the renamed "Energy Generation Fund." These payment amounts remain completely and utterly arbitrary. No case has been made in any respect to substantiate why these amounts have been chosen. The payments themselves are a categorically unfair subsidization of specific generation resources to the detriment of other market participants – the truest meaning of the phrase "the government picking winners and losers."

These state-sanctioned subsidies for nuclear generating facilities will embarrassingly put Ohio on par with states such as Illinois, New Jersey, and New York – states that are notoriously unfriendly to their business communities and taxpayers. Further undermining Ohio's most abundant and reliable generating facilities powered by coal and natural gas is the new subsidy for intermittent renewable energy generating facilities.

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 renewable energy resources (biomass, hydro, waste gas/heat, and wind) generate a total of 3,436 MWs. By contrast, the remainder of Ohio's major utility facilities fueled by coal and natural gas currently have an installed capacity of 27,637 MWs. Thus, of the 31,073 MWs of total installed generating capacity currently operating in Ohio, Sub. HB 6 mandates that 88% of it be placed at a direct economic disadvantage to the other 12% based solely on an individual electric generating facility's fuel source.

This is the very definition of anti-competitive and patently 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. The costs to consumers of all classes continue to snowball with every new version of this bill.

Disappointingly, the bill still allows an electric distribution utility (EDU) to continue recovering, through 2030, the costs associated with its ownership stake in a newly renamed "Legacy 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, including the Ohio Valley Electric Corporation (OVEC).

Encouraging cost recovery for another decade for 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. What is more, it is explicitly unclear what commercial, industrial, and large user customers will be paying for these decrepit, debt-ridden facilities as the PUCO is directed to decide those charges in the future beginning with a ceiling of \$1,500 per month per customer.

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 Electric Generation Fund will now collect \$160 million annually from your constituents and the inexplicably valued \$9.00 and \$3.00 per MWh payments to nuclear and renewable energy generation facilities respectively will be the unnecessary reasons why. Those facts are deeply concerning as the fund and payments 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 subsidies from the Energy Generation Fund and OVEC cost recovery. The more that bad behavior is rewarded, the more it will continue to manifest itself in the Ohio Legislature on these issues.

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. However, government-mandated subsidies will drive away the outside investment the state claims it welcomes and discourage the building of new Ohio-based generation facilities the state alleges it wants and needs.

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

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 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 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.

To be clear, the current audit provision in the bill does not require any upfront proof of necessity for a subsidy for the nuclear facilities prior to releasing the funds. Thus, the Ohio Senate will be handing a bankrupt company that was unwilling to even come before the body and ask for the \$150 million subsidy it is set to receive without so much as a sliver of confirmation it is actually warranted and prudent. This group strongly urges the Senate to incorporate a "need test" into the bill that would require a demonstration of need before any funds are released. This is clearly a rational step to take before subjecting Ohioans to potentially unnecessary charges on a monthly basis for the next six years.

While the current audit language completely misses the mark, the Senate still has time to strengthen that provision and provide some specific measures to be utilized in determining whether any financial need remains throughout the duration of the program. We believe it is also necessary to make clear that failure to demonstrate an ongoing need would automatically result in termination of future subsidies.

We also urge the committee to consider the damage such subsidies will do to the PJM capacity market and others participating in it without a subsidy. Requiring the subsidized facilities to bid in at no lower than their actual costs would mitigate the harm done to the other Ohio generating facilities not being directly subsidized. Additionally, providing for a long overdue refund mechanism in Ohio law would go a long way in protecting the state's ratepayers, who time and again have been fleeced for billions of dollars in impermissible electric utility charges that were deemed so by the Supreme Court of Ohio after the fact. It is unconscionable to think that Ohio ratepayers could possibly pay for yet another subsidy in this instance only to have an audit determine it was not permissible after the funds have already been paid but there still be no mechanism in state law to return the money to its rightful possessors.

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 once again 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 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.

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

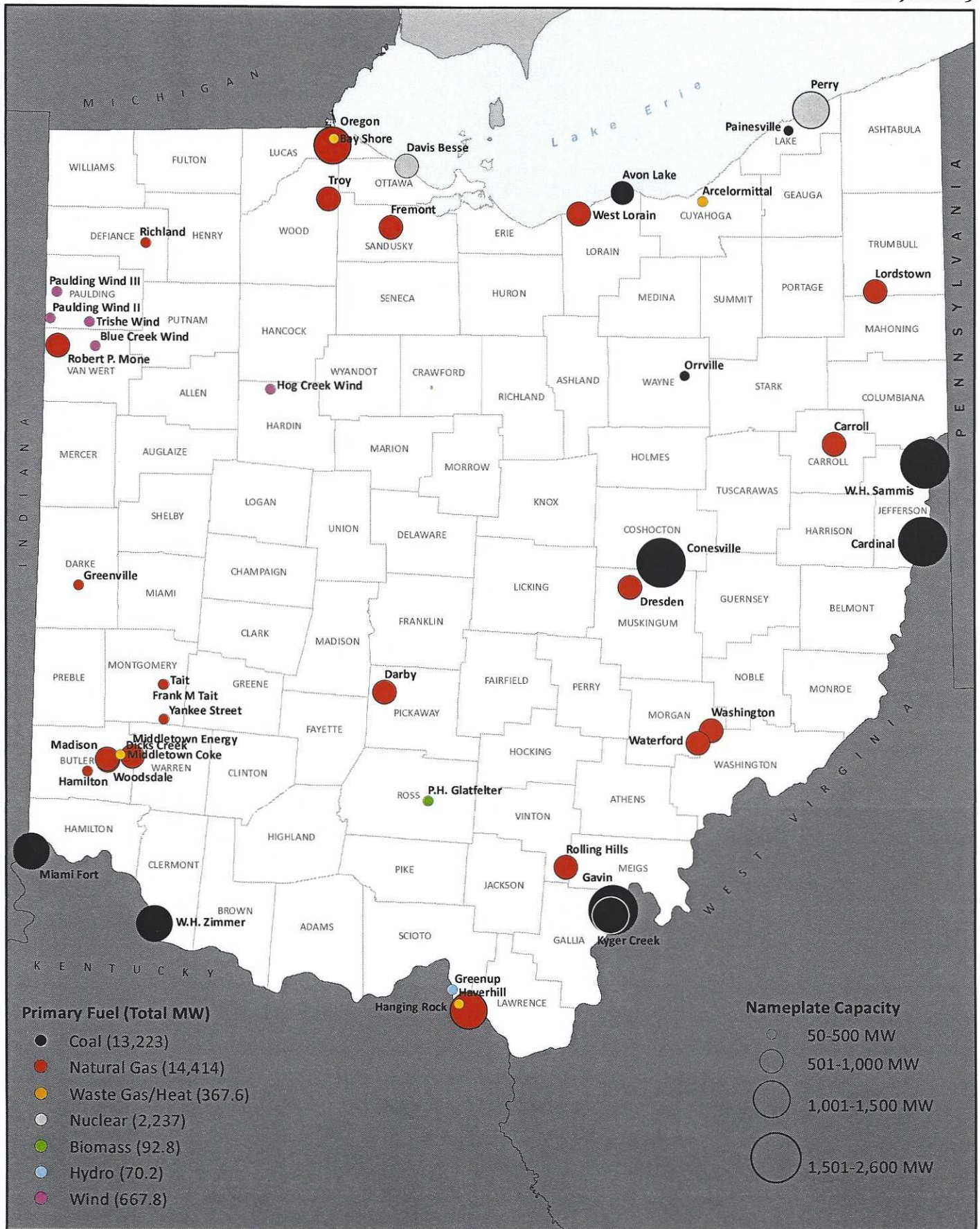
employees at the state's two nuclear generation facilities, or than those at a 65-year-old coal facility in Indiana for that matter. Ohio has recently experienced the closure of other electric generation facilities and major manufacturing operations, yet no legislative assistance was offered to any of 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. It also allows the employees at the Indiana facility to free-ride off of those same desperate, hurting Ohioans.

Our analysis of this latest version of the bill continues to leave 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. It also leaves us wondering if the full scope of the negative impact this bill will inevitably have on this state is fully clear to and comprehended by Ohio policymakers. The creation of adverse market conditions in Ohio will cause our capital as well as that of others disadvantaged by these misguided policies to flow to neighboring states in PJM or to other markets across the country rather than continue to be invested in this state.

We again appreciate this opportunity to submit written testimony on Sub. HB 6. We implore the Ohio Senate to do what is best for the State of Ohio and its citizens in the long-term when considering such massive changes to its energy policy. As always, 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.



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



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.