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VIA HAND DELIVERY

Honorable Dave Yost
Attorney General of Ohio
30 E. Broad St., 14th Floor
Columbus, OH 43215

RE: Review of Ohioans Against Corporate Bailouts' Proposed Summary Set Forth in Petition for Submission to the Secretary of State and Attorney General for Certification of Summary for Referendum Petition, filed July 29, 2019, as to Amended Substitute House Bill No. 6 ("the Summary")

Dear General Yost:

Our Firm has been retained by FirstEnergy Solutions Corp. in connection with the proposed Referendum Petition concerning the recently enacted H.B. 6.

We have reviewed the Summary, filed July 29, 2019, by the committee known as "Ohioans Against Corporate Bailouts" (the "Committee") responsible for the Referendum Petition, and find that it is not a fair or truthful statement concerning H.B. 6.

The most fundamental problem with the Summary and the Referendum Petition is that they fail to state or acknowledge that H.B. 6 is a "law providing for a tax levy" that is expressly excepted from a referendum under Article II, Section 1d of the Ohio Constitution. Thus, the Referendum Petition on H.B. 6, and any Summary for a proposed referendum on H.B. 6, contravene the Ohio Constitution and are misleading because the Summary and Referendum Petition state, imply, or suggest that H.B. 6 is subject to referendum when that is untrue.

Beyond this foundational defect, the Summary filed by the Committee is an unfair and untruthful statement concerning H.B. 6 because it is filled with material inaccuracies and material omissions. This letter is not intended to provide an all-inclusive list of the problems with the Summary, but we urge you to consider the following material inaccuracies and material omissions found in the Summary:

I. Inaccuracies / Untruthful Statements:

R.C. 3706.40: The Summary inaccurately states that the definition of "qualifying renewable resource" includes any facility in Ohio that meets the three listed prerequisites. But, under the Section, a "qualifying renewable resource" is limited to an "electric generating facility" in Ohio that meet the three prerequisites.

R.C. 3706.41: The Summary inaccurately states that "operational risks" and "market risks" must be included in the application, but, instead, it is the cost of operational risks and market risks "that would be avoided by ceasing operation of the resource" which must be included in the application.

R.C. 3706.43: The Summary inaccurately states that the "owner or operator" of the qualifying nuclear resource must maintain a "principal place of business in Ohio and a substantial business presence in Ohio." But this requirement is for the operator and has no such requirement for the owner. [Other Sections of H.B. 6 use the phrase "owner or operator," but not this section.]

R.C. 3706.45: The Summary inaccurately states that this Section "requires qualifying nuclear and renewable resources to report their megawatt hours generated...." But this requirement applies only to an owner or operator of such resources whose application for nuclear resource credits or renewable energy credits was approved.

The Summary inaccurately states that the Ohio air quality development authority ("Authority") "shall issue one credit for each megawatt hour reported." But this section actually states that the Authority shall issue one credit to a qualifying resource for each megawatt hour of electricity that is both reported and approved by the Authority.

The Summary inaccurately states that the Authority issues these credits "at a default price of $9 for a renewable energy credit and $9 for a nuclear credit," but this is misleading because the Authority does not issue credits for any price; instead, subsection (C) states the $9 is the price the Treasurer of State will pay the owner or operator of a qualifying nuclear resource or a renewable resource, as applicable, for each credit earned by each qualifying resource.

R.C. 3706.53: The Summary inaccurately states that this Section merely "apportions" the revenue collected through the utility charges between the nuclear generation fund and the renewable generation fund. But this Section instead states that the allocated percentages of the monthly charges collected by the utilities "shall be deposited" into these two funds.

The Summary inaccurately states that the funds apportioned to and received by the nuclear generation fund and the renewable generation fund are "subject to reduction or suspension by the Commission." But only the Authority has the authority to "cease or reduce" payments for nuclear resource credits, in consultation with the Commission.

R.C. 3706.55: The Summary inaccurately states that "the Authority ... distribute[s] money" from the undefined "generation funds" to "qualifying resources." But the

Authority does not distribute any money. Instead, the Authority "shall … direct the treasurer of state to remit money" from the nuclear generation fund to the owner or operator of the qualifying nuclear resource and from the renewable generation fund to the owners or operators of qualifying renewable resources.

R.C. 3706.61: The Summary inaccurately states that the Commission's annual reviews of the owner or operator of a qualifying nuclear resource are "to be submitted to the legislature and made available to the public." But that is not true. It is the Commission's required "report" of findings from the annual review that is submitted to majority and minority leaders of the Senate and House of Representatives and the Authority and are made publicly available.

The Summary inaccurately states in the second bullet point "and suspend or terminate payments for nuclear credits for any failure to cooperate with the annual review…." But subsection (B) provides only for the suspension of such payments and only for a "material failure to timely and fully respond," and such a suspension is only until the failure is cured to the Commission's satisfaction.

The last clause of the third bullet point of the Summary inaccurately states, "further permits the Authority to reduce or cease revenue requirements, collection of charges from customers, and credit prices accordingly." But Subsection (E)(1) states that it is the Commission that shall make these "reductions" (not cessations of payments) if the Authority determines reductions are necessary.

R.C. 3706.63: The Summary inaccurately states that the rules to be adopted by the Authority are to "implement and administer the nuclear generation fund and renewable generation fund." But this Section states that the rules are to implement "sections 3706.40 to 3706.65 of the Revised Code," not just the two funds.

R.C. 3706.65: The Summary inaccurately states that the Authority is permitted to "use resources of the Commission," but this Section states the Authority may use the "staff and experts" employed at the Commission by mutual agreement.

The Summary inaccurately states that the Authority's use of resources is "to establish and administer the nuclear and renewable generation funds." But this Section states the Authority's use of the Commission's staff and experts is more generally "for the purpose of carrying out" the Authority's duties under R.C. 3706.40 to R.C. 3706.63.

R.C. 4928.64: The Summary misstates the nature of the reduction in solar energy requirement. The Summary refers to an existing "minimum requirement of kilowatt hours that must be generated from solar energy." However, there is no such minimum requirement of kilowatt hours. Rather, the current requirement is that a certain percentage of the portion of electricity provided to consumers be from solar

energy. The Act reduces this required percentage from 0.26% in 2020 to 0% and it remains 0% through 2026.

R.C. 4928.644: The Summary inaccurately states that R.C. 4928.644 exempts self-assessing purchasers from bypassable charges imposed by electric distribution utilities "in compliance with the amendments to [R.C. 4928.64] reducing renewable energy requirements." However, R.C. 4928.644(B)(2) exempts self-assessing purchasers from bypassable charges "imposed under [R.C. 4928.64(E)]." Subsection (E) of R.C. 4928.64 is a pre-existing provision that, contrary to the summary, was not part of the recent amendments, and it concerns bypassable charges for consumers that have exercised choice of supplier under R.C. 4928.03; it does not relate to the reduced renewable energy requirements, contrary to what the Summary states.

R.C. 4928.465: The Summary inaccurately expands the scope of the prohibition that was added to R.C. 4928.645. The Summary states that a qualifying renewable resource that receives a renewable energy credit through the new provisions in the Act is prohibited from obtaining a credit for the same "from existing renewable energy credit programs." But the amended language in R.C. 4928.645 prohibits a qualifying renewable resource that receives a renewable energy credit through the new provisions from obtaining a credit under the particular renewable energy credit program that is set forth in R.C. 4928.645; it does not broadly apply to all existing renewable energy credit programs as the Summary states.

R.C. 4928.66: The second bullet point of the Summary inaccurately summarizes the definition of "portfolio plan" that is cross-referenced in R.C. 4928.66, which is R.C. 4928.6610(C)(1). The Summary states that the term means "the energy efficiency and peak reduction program required by the Commission." This only captures part of the definition, which means either the comprehensive energy efficiency and peak demand reduction program portfolio plan required under rules adopted by the Commission in OAC 4901:1-39, or any plan implemented pursuant to R.C. 4928.66(G).

The Summary inaccurately states that the amended Section extends "portfolio plans that expire between the effective date of this Act and December 31, 2020, to December 31, 2020 …." But the Section states that "[i]f an electric distribution utility has a portfolio plan in effect as of the effective date of the amendments to this section by H.B. 6 of the 133rd general assembly and that plan expires before December 31, 2020, the commission shall extend the plan through that date."

R.C. 5727.75: The Summary is misleading in that it implies that all energy projects of up to 20 megawatts will be exempt from the specified requirements. But R.C. 5727.75(B)(1) and (C) limit the property tax exemptions to qualified energy projects using renewable energy resources (R.C. 5727.75(B)(1)), clean coal technology (R.C. 5727.75(C)), advanced nuclear technology (R.C. 5727.75(C)),

or cogeneration technology (R.C. 5727.75(C)), along with other requirements, such as specifying that the projects must have been constructed or placed into service during certain time periods.

II. Material Omissions

R.C. 3706.40: The Summary fails to define or explain the terms "credit price adjustment," "strike price," and "market price index."

R.C. 3706.41: The Summary omits to state that an application by a qualifying nuclear resource must also include "any other information that demonstrates the resource is projected not to continue being operational."

R.C. 3706.45: The Summary fails to state when the required quarterly megawatt-hour information must be reported: "not later than seven days after the close of each quarter," with the first one due by "April 7, 2020," and the last one due "not later than January 27, 2027."

R.C. 3706.55: The Summary omits to state that the Authority must direct the Treasurer of State concerning disbursement of moneys from the two funds "every three months" from April 2021 through January 2028.

The Summary fails to state that the required remittances of money from the nuclear generation fund are subject to reduction or suspension by the Authority based on the Commission's required annual reviews of the qualifying nuclear resource.

R.C. 3706.61: The third bullet point of the Summary states that the Authority may reduce or cease payments from the nuclear generation fund "if the market price index exceeds the strike price." But the Summary fails to explain these defined terms and, specifically, fails to state that the "strike price" is $46 per megawatt hour.

The last clause of the third bullet point of the Summary fails to state that the Commission shall also "[a]djust the percentages" of the collected charges that must be deposited into the nuclear generation fund and renewable generation fund, in accordance with a reduced revenue requirement for nuclear resource payments.

The Summary omits to state that another reason for reducing or ceasing payments is if the resource no longer meets the requirement under R.C. 3706.43(B)(2) that the operator of the resource maintains a principal place of business in Ohio and a substantial presence in Ohio with regard to its business operations, offices, and transactions.

The Summary omits to state that the costs of retaining consultants to perform the Commission's annual reviews shall be paid from the nuclear generation fund.

The Summary omits to state that the Commission shall determine that any revisions made by it "is not for an increase in any [utility] rate, joint rate, toll, classification, charge, or rental."

R.C. 3706.63: The Summary omits to state that the rules must be adopted "[n]ot later than January 1, 2020."

R.C. 4928.01: The Summary states that the amended definition of "net-metering system" refers to a "facility located on a customer's premises," but fails to state that the amendment applies only to an "industrial customer-generator" and a net-metering system with a capacity of "less than twenty megawatts."

The Summary fails to state that the term "sponsors" in the definition of "prudently incurred costs related to a legacy generation resource" incudes both a "current or former sponsor" under a power agreement.

R.C. 4928.148: The Summary omits to state that this Section provides: "An electric distribution utility, including all electric distribution utilities in the same holding company, shall bid all output from a legacy generation resource into the wholesale market and shall not use the output in supplying its standard service offer provided under section 4928.142 or 4928.143 of the Revised Code."

R.C. 4928.47: The Summary fails to state that contracts with mercantile customers to construct customer-sited renewable energy resources are "subject to approval by the public utilities commission" and that the Section further provides that "[a]t no point shall the commission authorize the utility to collect, nor shall the utility ever collect, any of those costs from any customer other than the mercantile customer or group of mercantile customers."

The Summary also fails to state that the Section prohibits electric distribution utilities from collecting the costs associated with a customer-sited renewable energy resource from "any customer other than the mercantile customer or group of mercantile customers."

R.C. 4928.471: The Summary fails to state that the Commission's "approval of a decoupling mechanism under this section shall not affect any other rates, riders, charges, schedules, classifications, or services previously approved by the commission."

R.C. 4928.642: The Summary states that this section "requires the Commission to reduce the number of kilowatt hours required to be produced by qualifying renewable energy resources … by allocating the total amount of qualifying kilowatt hours produced during the previous year … and subtracting that allocation for each such utility's or company's amount." But the Summary fails to state that the "company's amount" is actually the company's "compliance amount."

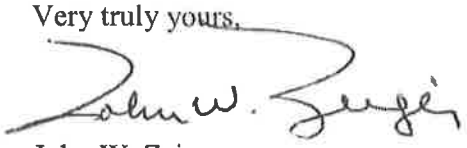
R.C. 4928.66: The Summary states that the energy savings baseline calculation will exclude "certain loads and usages described in this section," but fails to state that the Section also provides that the energy savings baseline "may also be reduced for new economic growth in the utility's certified territory …."

R.C. 4928.6610: The Summary omits to state that the definition of "portfolio plan" in R.C. 4928.6610(C) was amended to include plans implemented by the Commission specifically pursuant to R.C. 4928.66(G). This is an important distinction as multiple energy efficiency programs are set forth in R.C. 4928.66.

For these reasons, the Committee's Summary should be rejected and cannot be certified as a fair and truthful statement of H.B. 6 under R.C. 3519.01(B)(3).

Thank you for your consideration. Please let me know if you have any questions.

Very truly yours,



John W. Zeiger

cc: Stuart G. Parsell, Esq.

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