HB46
Oppose

Corporate and Business Entities – Combined Reporting
Comments on HB 46

Company Overview

NextEra Energy Resources, LLC, together with its affiliated entities is a clean energy leader and is one of the largest wholesale generators of electric power in the U.S., with approximately 24,600 megawatts of total net generating capacity, primarily in 38 states and Canada as of year-end 2021. NextEra Energy Resources is the world's largest generator of renewable energy from the wind and sun and a world leader in energy storage. The business operates clean, emissions-free nuclear power generation facilities in New Hampshire and Wisconsin as part of the NextEra Energy nuclear fleet. NextEra Energy Resources is a subsidiary of Juno Beach, Florida-based NextEra Energy, Inc. (NYSE: NEE). For more information, please visit www.NextEraEnergyResources.com.

OPPOSITION to HOUSE BILL 46

Purpose: House Bill ("HB") 46 proposes a significant change to Maryland's system of taxing businesses. Specifically, HB 46 would implement the unitary combined reporting method ("combined reporting method") by replacing the current separate entity filing method. The bill would require the combined reporting method mandatory for taxable years beginning after Dec. 31, 2024.

NextEra Energy Resources opposes HB 46 for the following reasons:

- The unitary combined reporting taxation method arbitrarily attributes more income to Maryland than is justified by a company's economic activity within the state. While the legislation touts itself as being a fairer approach to the current separate reporting methodology, such arbitrary assignment of income leads to inequitable results.

- The combined reporting method has historically been found to reduce economic growth in states that have a corporate income tax rate in excess of 8%. Maryland's corporate income tax is 8.25%.

- Proponents of the combined reporting method suggest it is a simpler approach to determining corporate tax liability. However, determining the composition of the unitary group is extremely complicated, subjective, and potentially costly for both the state and the business, often resulting in expensive, time-consuming litigation.

- Moreover, determining a revenue estimate for combined reporting is fraught with uncertainty. Pursuant to an analysis of Tax Years 2006-2010 conducted by the State Comptroller's Office, the unitary combined reporting method would have resulted in an estimated increase in revenue in 2006 and 2007, an estimated decrease in revenue in 2008 and 2009, and relatively flat revenue in 2010. As such, the combined reporting method arbitrarily creates winners and losers among businesses – and could result in greater tax liability for a business one year in Maryland, but lower tax liability for the same business in Maryland in another year – which clearly leads to revenue volatility for the state at a time when both businesses and the state need revenue stability.

- Proponents of the combined reporting method in Maryland erroneously claim implementation of the combined reporting method will close corporate loopholes, thereby preventing multi-state companies from using tax planning or shifting revenues from Maryland to other states to avoid tax exposure. However, the Maryland General Assembly has already implemented reforms to address intercompany shifting of interest and intangibles (§10-306.1), and further provided the State Comptroller the authority to adjust income involving other intercompany transactions (§10-109).

- The bi-partisan Maryland Economic Development and Business Climate Commission ("Augustine Commission") has previously opposed the adoption of combined reporting in the state. In its January 2016 report, the Augustine Commission strongly opposed combined reporting (e.g., "Recommendation 5: Do not adopt combined reporting and indicate clearly the intent not to do so" (Augustine Commission Report at xii)). As the Augustine Commission Report states, "[f]or many years, the General Assembly has considered whether to impose combined reporting in Maryland. This debate causes uncertainty and sends a negative message to business considering expansion in or relocation to the State. In its effort to reform the corporate income tax and generate additional revenues, combined reporting can create revenue volatility and winners and losers among corporate taxpayers. Combined reporting can also lead to additional litigation from taxpayers and create additional administrative costs for both taxpayers and the State (Augustine Commission Report at 38-39). Similar conclusions were reached by the Maryland Business Tax Reform Commission in its exhaustive 2010 study.

- Despite the recommendations of the bipartisan Augustine Commission, combined reporting continues to be introduced and debated on an annual basis. The same arguments are raised in support of enacting combined reporting in Maryland: (i) a majority of states have implemented combined reporting; and, (ii) combined reporting could secure additional revenue for the state.

- In the immediate region, only New Jersey and the District of Columbia have adopted combined reporting. Thus, the adoption of combined reporting could further jeopardize the business attractiveness and competitive standing of Maryland vis-à-vis its neighbors.

- Maryland also adopted single sales factor apportionment for determining its corporate income tax in 2018. The impact of this equally significant change in corporate taxation remains, at best, unclear. Thus, it would be prudent to consider combined reporting as part of a comprehensive study of state tax policy – particularly the impact on business investment in jobs and economic development -- before rushing to implement it now.

- Companies such as NextEra Energy Resources, which do business in multiple states, closely monitor the quality of business climate before making investment decisions. Regulatory certainty – stability of laws and regulations – is a critical factor in investment decisions. The perennial General Assembly debate over combined reporting, "causes uncertainty and sends a negative message to businesses considering expansion in or relocation to the State" (Augustine Commission Report at 39). Given that combined reporting has an unclear financial impact to the State, NextEra Energy Resources recommends that the Committee fully analyze the potential impacts to the business community of combined reporting before proceeding with any implementation.

In conclusion, NextEra Energy Resources respectfully encourages an unfavorable report on HB 46.