SB 311

Oppose / Senate Budget and Taxation

Corporate and Business Entities – Combined Reporting
"Corporate Tax Fairness Act of 2020"

Company Overview

NextEra Energy Resources, LLC, through its affiliates ("NEER"), is the world's largest generator of renewable energy from the wind and sun and a world leader in the development of battery storage. NEER's strategic focus is centered on the development, construction, and operation of long-term contracted assets throughout the U.S. and Canada, including renewable generation facilities, natural gas pipelines, and battery storage projects. With approximately 21,000 MW of total net generating capacity at December 31, 2018, NEER is one of the largest wholesale generators of electric power in the U.S., with approximately 20,400 MW of net generating capacity across 36 states, and 500 MW of net generating capacity in 4 Canadian provinces. In Maryland, NEER has long been active in meeting the wholesale and retail electricity needs of electric customers, and continues to seek solar and storage development opportunities. For more information, visit www.NextEraEnergyResources.com.

OPPOSITION to SENATE BILL 311

Purpose: Senate Bill ("SB") 311 proposes a significant change to Maryland's system of taxing businesses. Specifically, SB 311 would implement the unitary combined reporting method ("combined reporting method") by replacing the current individual or separate entity filing method. The bill would require the combined reporting method mandatory for taxable years beginning after December 31, 2020.

NEER opposes HB 311 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 the "Corporate Tax Fairness Act of 2020," 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 percent. Maryland's corporate income tax is 8.25 percent, among the highest in the Mid-Atlantic region.

- 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 2008 and 2009, and relatively flat revenue in 2010. As such, the combined reporting method arbitrarily creates winners and losers among businesses and results in 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 legislature has already implemented reforms to resolve ambiguities associated with intercompany shifting of interest and intangibles (§10-306.1), and further provided the State Comptroller broad authority to make adjustments 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)

- Despite the recommendations of the bipartisan Augustine Commission, the implementation of combined reporting continues to be introduced and debated on an annual basis. The same arguments are raised in support of implementation of combined reporting in Maryland each year: (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.

- The Maryland Business Tax Reform Commission in its exhaustive 2010 study reached conclusions similar to the Augustine Commission on combined reporting, stating that "combined reporting is a complex change for taxpayers, tax preparers, and the Comptroller's office, introducing uncertainty at a time when the economy is struggling to recover from the recent recession. It would result in a shift of the tax burden, substantial in some cases, among industries and among taxpayers, resulting in winners and losers. Many of the tax avoidance measures which combined reporting is intended to prevent have already been addressed by the State through the Delaware holding company addback, the captive real estate investment trust (REIT) legislation, and other measures." (Commission at 4)

- Maryland also adopted Single Sales Factor 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 in 2020. For example, SB 223, currently before the Senate Budget and Taxation Committee proposes to create a public-private "Commission on Tax Policy, Reform and Fairness," which would be charged with reviewing the state's tax program and reporting its findings to the Governor and the General Assembly. Senate Bill 223 represents the kind of prudent approach needed to review the state's tax program in a holistic fashion before proceeding with a significant corporate taxation change such as combined reporting.

- Companies such as NEER, 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. 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, NEER recommends that the Committee fully analyze the potential impacts to the business community of combined reporting before proceeding with any implementation.

In conclusion, NEER respectfully encourages an unfavorable report on SB 311.