SB 511
Oppose (with Amendments)/
Senate Budget and Taxation

Corporate and Business Entities – Combined Reporting
Comments on the "Corporate Tax Fairness Act of 2021"

Company Overview

NextEra Energy Resources, LLC, (together with its affiliated entities, "NextEra Energy Resources" or "NEER"), is a clean energy leader and is one of the largest wholesale generators of electric power in the U.S., with approximately 21,900 megawatts of total net generating capacity, primarily in 37 states and Canada as of year-end 2019. NextEra Energy Resources, together with its affiliated entities, 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, LLC is a subsidiary of Juno Beach, Florida-based NextEra Energy, Inc. (NYSE: NEE). For more information, please visit www.NextEraEnergyResources.com.

OPPOSITION to SENATE BILL 511

Purpose: Senate Bill ("HB") 511 proposes a significant change to Maryland's system of taxing businesses. Specifically, SB 511 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 December 31, 2021.

NextEra Energy Resources opposes SB 511 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 percent. Maryland's corporate income tax is 8.25 percent.

- 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 the Maryland 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.

- Public companies such as the parent of NEER must publish their financial results quarterly in accordance with Generally Accepted Accounting Principles (GAAP). A significant change in tax policy such as mandatory combined reporting will result in a financial statement impact in the millions to some public companies, irrespective of the impact to such companies' cash tax liability, as well as an unintended negative impact to those companies in the financial markets.

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

Potential Amendments

For the above reasons, NextEra Energy Resources continues to oppose Mandatory Unitary Combined Reporting as a matter of sound tax and fiscal policy. However, if the committee decides to proceed with Combined Reporting, we respectfully urge you to adopt the following as amendments:

1. **Deferred Tax Relief** – As noted earlier, significant tax law changes, such as those proposed by SB 511, typically require public companies to re-compute certain cumulative tax assets or liabilities previously recorded in their financial statements. The effect of that re-computation requires companies to immediately adjust tax expense under GAAP. That adjustment may impact a company's stock value and stock price, which could negatively impact the availability of capital for investment.

   Deferred tax relief has been adopted in many states as part of combined reporting, including in Connecticut, the District of Columbia, Massachusetts, Michigan, New Jersey, Kentucky and New Mexico. In short, the amendment allows the recovery of the book adjustment through a deduction to be claimed in the future that can be

spread equally over a period of time selected by the General Assembly. As such, and based on experience in other states, there need be no fiscal impact associated with this provision within the budgetary window. Further, the legislature will have the opportunity, if it deems it necessary, to delay the availability of the deduction, as other states have done (CT, MA, DC).

2. **Utility Exclusion** – Under SB 511, a combined group of companies would include corporations that are public utilities, regulated by the Public Utility Commission(s) of another state with respect to the rates it charges its customers. This clearly does not reflect income earned in Maryland, as there is no relationship between a rate-regulated utility's profit paid by customers outside of Maryland and the business activities of its non-regulated affiliates in the state. A rate-regulated utility operates under franchise or similar agreements, and cannot expand geographically beyond its franchise territory without the approval of the PSC in the state in which it is legally approved to operate. Additionally, any intercompany transactions are scrutinized by its regulators. Thus, Maryland should not import the profits of a utility that are generated exclusively from utility customers in another state, and should not export the profits of a Maryland utility that are generated exclusively from Maryland customers.

In the House, HB 172, sponsored by Delegate Mary Lehman, incorporates both of these proposed amendments – the Deferred Tax Relief and Utility Exclusion provisions. Nearby New Jersey's combined reporting law incorporates both proposed provisions as well.

Conclusion

Finally, virtually every segment of our society has suffered as a result of the pandemic. Employers and employees alike are strained economically, having experienced a public health emergency that no one in our lifetime has experienced, nor could have anticipated. The strains on the economy and our society are no less significant today than they were last year. Now is not the time for the General Assembly to be imposing such a significant change in tax regime on businesses. In conclusion, NextEra Energy Resources respectfully encourages an unfavorable report on SB 511.