

Opposition testimony to a provision in Sub. H. B. No. 33

Chairman Dolan, Vice Chair Cirino, Ranking Member Sykes and members of the Senate Finance Committee.

Vistra respectfully requests you remove a provision in Sub. H.B. No. 33 that imposes a limitation on the valuation of generation facilities.

Vistra is a leading Fortune 500 integrated retail electricity and power generation company with operations in Ohio that focus on delivering an innovative, customer-centric approach to retail electricity and over 7,500 MW of electric generation in the PJM market.¹ In Ohio, Vistra operates seven generation facilities producing 3,832 MW of generation from natural gas, coal and oil fuels and is currently seeking to add to our fleet with the potential acquisition of Energy Harbor's assets in the state.²

Vistra appreciates the need of the state to produce revenues and the importance of property valuations to sustain the communities where our facilities are often located. Vistra prides itself on being a responsible taxpayer and strong community partner, as these communities are not only where our facilities are located but also where our employees live and raise their families.

Thus, it is disheartening to have to call out the punitive limitation on valuation of generation facilities that is found in Sub. H.B. No. 33, specifically, the provision found on page 3007, lines. 92426-92433 of the LSC 135 0001-3 printing, which adds Section 5727.47(G), stating:

(G) An electric company with taxable property that is, or is part of, a facility that generates electricity may file a petition for reassessment seeking a reduction in taxable value of that property, provided that any such petition shall not request, and the tax commissioner shall have no authority to grant, a reduction in taxable value of more than seven and one-half per cent of the taxable value of the property for the immediately preceding tax year.

Vistra believes the new language raises constitutionality questions in three respects: (1) Equal protection of laws; (2) Due process of laws; and (3) Substantive due process. Detailed legal analysis on those points is appended as Exhibit 1 to this letter. In essence though, the proposed provision imposes tax to a phantom value in situations involving overstated and erroneous taxable value of more than 7.5%. The

¹ The company brings its products and services to market in 20 states and the District of Columbia, including six of the seven competitive wholesale markets in the U.S. Serving nearly 4.3 million residential, commercial, and industrial retail customers with electricity and natural gas, Vistra is one of the largest competitive electricity providers in the country and offers over 50 renewable energy plans. The company is also the largest competitive power generator in the U.S. with a capacity of approximately 37,000 megawatts powered by a diverse portfolio, including natural gas, nuclear, solar, and battery energy storage facilities. In addition, Vistra is a large purchaser of wind power. The company owns and operates the 750-MW/1,600-MWh battery energy storage system in Moss Landing, California, the largest of its kind in the world.

² Vistra announced execution of a definitive agreement to purchase Energy Harbor Corp. on March 9, 2023 pending regulatory and shareholder approval. A release with additional information on the proposed transaction can be found at: <https://hub.vistracorp.com/vistra-announces-acquisition-of-energy-harbor/>

Supreme Court has struck down, on the grounds of unconstitutionality, statutory schemes that were far less arbitrary than the proposed provision.

Furthermore, Vistra believes the new language short-circuits the natural ebb and flow of commercial property value, especially for the type of commercial property – generation assets – that it seeks to limit. Given their nature, these generation assets are often valued using an income capitalization approach³ or a cost approach⁴. Given the volatility of energy markets, a true market valuation of these assets may ebb and flow greater than 7.5% in some years. To permit these properties to be unlimited in appreciation but capped in depreciation creates a “heads I win / tails you lose” situation for the taxpayer and establishes a dangerous precedent for property valuation across the board in the future.

Lastly, this policy would potentially create a tax policy that would hasten retirements of marginally economic units, potentially placing electric reliability at risk. If a unit is unable to regularly be dispatched in the PJM wholesale market but its valuation is kept artificially high due to the reduction cap proposed in Sub. H.B. No. 33, it may make more economic sense to retire the unit entirely than to keep it running and be exposed to the higher tax burden.

Vistra appreciates the opportunity to provide this testimony in opposition to this provision in Sub. H.B. No. 33 for the reasons stated above and hopes that the chamber will strike the language found in Section 5727(G) before passing this legislation.

³ Appraises the value of a property based on the income the property may generate over time.

⁴ Appraises the value of a property based on the cost to reconstruct the property, taking into account depreciation.