

**Testimony of the Industrial Energy Consumer Group
In Opposition of
L.D. 417, *An Act To Facilitate Net Energy Billing*
Before the Joint Standing Committee on Energy, Utilities and Technology
March 2, 2023**

Good morning, Senator Lawrence, Representative Ziegler and Members of the Joint Standing Committee on Energy, Utilities and Technology. I am Steven Hudson, an attorney with the firm of Preti Flaherty, here today on behalf of the Industrial Energy Consumer Group (IECG). IECG has been representing medium and large sized consumers of energy in Maine for more than twenty-five years at the state, regional and federal level. We advocate for policies that reduce the cost of energy for our members, helping to maintain their operations in our state and the thousands of jobs provided directly and indirectly by those operations.

Industrial Energy Consumer Group testifies today in opposition to L.D. 1955, *An Act To Facilitate Net Energy Billing*, just over one year to the day when this committee heard an identically titled bill, LD 1955, proposing the same new set of costs to be imposed on Maine ratepayers for the benefit of solar developers. These bills are so similar that IECG's testimony on LD 1955 is attached to this testimony, and we request that it be considered part of our testimony today.

IECG asks this Committee once again to adopt the attached amendment we proposed last year for LD 1955. We ask the committee to adopt this amendment in lieu of the current text of LD 417. We said last year that "[t]he Committee has spent incredible amounts of time dealing with NEB-related issues for more than six years." We can now make that SEVEN. And it appears that this bill and LD 509 are only the first two bills that will deal with distributed solar generation this session. While some of that committee time was necessary, this bill, LD 509, and others to come before you illustrate what we said last year: "that the committee is being asked by out of state developers to write increasingly detailed tweaks to the NEB regulatory scheme." IECG's proposed amendment would explicitly give the PUC the authority to make changes to the NEB scheme as long as such changes are designed to meet the PUC's purposes under 35-A MRS §101 to:

ensure safe, reasonable and adequate service, to assist in minimizing the cost of energy available to the State's consumers, to ensure that the rates of public utilities subject to rate regulation are just and reasonable to customers and public utilities and to reduce greenhouse gas emissions to meet the greenhouse gas emissions reduction levels set forth in Title 38, section 576-A.

Thank you for the opportunity to submit these comments. IECG is prepared to work with the sponsor, this Committee, and all parties to address the issues presented by LD 1955. IECG is happy to answer questions now or at the work session

Amendment to LD 417
Proposed by Industrial Energy Consumer Group
February 22, 2022
And again on March 2, 2023

35-A MRSA §3474. Determination of public policy; state solar energy generation goals is amended as follows:

1. Encouragement of solar energy-related development. It is the policy of the State in furtherance of the goals established in subsection 2 to encourage the attraction of appropriately sited development related to solar energy generation, including any additional transmission, distribution and other energy infrastructure needed to transport additional solar energy to market, consistent with all state environmental standards; the permitting and financing of solar energy projects; appropriate utility rate structures; and the siting, permitting, financing and construction of solar energy research and manufacturing facilities for the benefit of all ratepayers.

1-A. Conformance with commission purposes. Notwithstanding any other provision of this Title, the commission shall develop and adopt such rules and policies related to distributed generation of solar energy as it determines necessary in conformance with the regulatory purposes set out in 35-A MRSA section 101. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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Before the Joint Standing Committee on Energy, Utilities and Technology
February 22, 2022**

Good morning, Senator Lawrence, Representative Berry and Members of the Joint Standing Committee on Energy, Utilities and Technology. I am Steven Hudson, an attorney with the firm of Preti Flaherty, here today on behalf of the Industrial Energy Consumer Group (IECG). IECG has been representing medium and large sized consumers of energy in Maine for more than twenty-five years at the state, regional and federal level. We advocate for policies that reduce the cost of energy for our members, helping to maintain their operations in our state and the thousands of jobs provided directly and indirectly by those operations.

Industrial Energy Consumer Group testifies today in opposition to L.D. 1955, *An Act To Facilitate Net Energy Billing* not because IECG opposes the concept that customers' energy data belongs to them, but rather because the consumer protections provided in the bill are directed only to one subset of customers, those participating in net energy billing. We are also concerned that the very broad protection against disclosure may risk disadvantaging Maine's energy regulatory agencies in carrying out their responsibilities. We are also concerned that, as with so many other net energy billing statutes, this bill appears to place costs on the great majority of ratepayers in order to benefit a small subset of ratepayers and the out of state NEB developers who are already benefiting from existing subsidies. Finally, we offer an amendment to the bill designed to allow the PUC to clearly conform NEB policies to its overarching purposes contained within 35-A MRS §101.

The precept that customer energy data belongs to the customer is one of the fundamental principles of IECG. Just as customers have the right to self-generate energy for their own usage, so too do they have the right of unrestricted ownership of their energy data. However, if a bill is to be enacted that codifies this right, it must include all ratepayers within its protections. The right of ownership and the right to privacy extends to all ratepayers, not just those receiving NEB subsidies, nor their out of state developers. If not confirmed for all, it should not be confirmed for any, as the exclusion of some risks compromising their rights.

IECG also supports the restriction on T&D utilities sharing or selling any customers' energy data without explicit permission of the customers affected. This is an outgrowth of the now well-accepted principle of customer sovereignty behind the meter. If this concept is to be enshrined in statute, it should be clear that this restriction applies to the data of all ratepayers, not just those benefiting from NEB subsidies. IECG notes that it is not aware of any Maine T&D utility ever disclosing such customer data without the lawful order of, and appropriate protections from, the PUC or a court of competent jurisdiction. IECG further suggests that it be clearly stated in the bill that the PUC and OPA both have the right to obtain and use such data without the approval of individual ratepayers, provided that appropriate confidentiality protections are extended to such data.

Several provisions of the bill create a risk of increased costs being imposed upon Maine's T&D utilities. As it is not specified whether such costs will be borne by the utilities and their shareholders, there is a legitimate concern that such costs will be recovered from all ratepayers, not just those benefiting from NEB subsidies. IECG submits that the bill should be amended to either specify that such costs should be borne by utility shareholders or all NEB subscribers. Other ratepayers should be held harmless from such costs.

Finally, IECG asks this Committee to adopt the attached amendment. The Committee has spent incredible amounts of time dealing with NEB-related issues for more than six years. While some of that time was necessary, this bill and LD 1819 illustrate that the committee is being asked by out of state developers to write increasingly detailed tweaks to the NEB regulatory scheme. IECG's proposed amendment would explicitly give the PUC the authority to make changes to the NEB scheme as long as such changes are designed to meet the PUC's purposes under 35-A MRS §101 to:

ensure safe, reasonable and adequate service, to assist in minimizing the cost of energy available to the State's consumers, to ensure that the rates of public utilities subject to rate regulation are just and reasonable to customers and public utilities and to reduce greenhouse gas emissions to meet the greenhouse gas emissions reduction levels set forth in Title 38, section 576-A.

Thank you for the opportunity to submit these comments. IECG is prepared to work with the sponsor, this Committee, and all parties to address the issues presented by LD 1955. IECG is happy to answer questions now or at the work session

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130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 1955

S.P. 693

In Senate, February 3, 2022

An Act To Facilitate Net Energy Billing

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Secretary of the Senate on February 1, 2022. Referred to the Committee on Energy, Utilities and Technology pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator VITELLI of Sagadahoc.
Cosponsored by Senator: LAWRENCE of York.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 35-A MRSA §3209-A, sub-§1, ¶C-1 is enacted to read:

3 C-1. "Net energy billing data" means customer information in the possession of a
4 transmission and distribution utility that is necessary to conduct and administer a net
5 energy billing arrangement, including but not limited to a customer's electricity usage,
6 energy production and historical payment information, as determined by rules adopted
7 by the commission.

8 Sec. 2. 35-A MRSA §3209-A, sub-§5-A is enacted to read:

9 5-A. Customer protection; energy assistance. Notwithstanding any provision of law
10 to the contrary, a customer's participation in net energy billing and any credits received
11 through such participation may not limit, reduce or otherwise affect a customer's
12 qualification for or receipt of benefits from any energy conservation or assistance program
13 administered by the Maine State Housing Authority or the Efficiency Maine Trust.

14 Sec. 3. 35-A MRSA §3209-A, sub-§8 is enacted to read:

15 8. Utility data and crediting. Net energy billing data is the property of the customer
16 to which it relates. A transmission and distribution utility shall release net energy billing
17 data to 3rd parties, including project sponsors, when directed to do so by the customer in
18 writing. A transmission and distribution utility shall release net energy billing data to a
19 project sponsor in accordance with this subsection if the project sponsor provides to the
20 utility a signed sales contract with the customer and the customer's written consent to the
21 release of the data. In accordance with rules adopted by the commission, a transmission
22 and distribution utility shall:

23 A. At no cost to the customer, provide access by the customer to that customer's net
24 energy billing data through an appropriate computer application or programming
25 interface;

26 B. At no cost to the customer, transmit in near real time, and no later than 7 days after
27 the data is generated, to a project sponsor net energy billing data necessary for the
28 project sponsor to produce a net energy billing statement or bill;

29 C. At no cost to the customer, when the customer is entering into a net energy billing
30 arrangement with a project sponsor, provide confirmation of acceptance and
31 implementation of the net energy billing arrangement to the customer and the project
32 sponsor within 7 days of that acceptance;

33 D. Synchronize the customer's net energy billing cycle with the project sponsor's net
34 energy billing cycle so that net energy billing credits are applied in real time;

35 E. Implement automated billing and crediting procedures determined by the
36 commission to be necessary to ensure billing accuracy and timeliness;

37 F. Apply:

38 (1) Unused net energy billing credits available from the oldest previous billing
39 cycle to the customer's bill before applying newer unused credits;

40 (2) Newly generated net energy billing credits to the customer's bill after all
41 previously generated credits have been applied; and

1 (3) All available net energy billing credits up to the full amount of the charges that
2 are billed in that billing cycle;

3 G. In the case of a customer in a billing assistance program provided by the
4 transmission and distribution utility, apply net energy billing credits as cash against the
5 balance of the bill on a monthly basis and excess credits to the customer's credit
6 account;

7 H. Provide to a project sponsor, within 7 days after the end of a net energy billing
8 cycle:

9 (1) The total energy production for the project;

10 (2) For each customer, the number of new kilowatt-hours credited to the customer
11 account, the credit rate for each kilowatt-hour, the total credits applied for the
12 billing cycle and the monetary value of the applied credits, any unused credit
13 amounts applied from prior billing cycles and the months in which those credits
14 were generated, unused kilowatt-hour or dollar credits being carried over to the
15 next billing cycle, the expiration date of any unused credits and the customer's
16 energy supply rate if the customer is not receiving the standard offer service and
17 the name of that supplier;

18 (3) Notice of the customer's enrollment in any special billing arrangement,
19 participation in any energy conservation or assistance program, participation in any
20 other net energy billing or demand-response program or in any electric vehicle
21 charging program; and

22 (4) Any additional data that the commission may require by rule; and

23 I. Provide to a net energy billing customer:

24 (1) The identity of the project sponsor providing the kilowatt-hours;

25 (2) The number of new kilowatt-hours credited;

26 (3) The credit rate for each kilowatt-hour;

27 (4) The total credit applied for the billing cycle and the monetary value of the
28 applied credit amount;

29 (5) Any unused credit amounts applied from prior billing cycles and the months
30 in which those credits were generated;

31 (6) Unused kilowatt-hour or dollar credits being carried over to the next billing
32 cycle; and

33 (7) The expiration date of any unused credits.

34 Sec. 4. 35-A MRS §3209-A, sub-§9 is enacted to read:

35 9. Billing errors. A transmission and distribution utility shall correct any net energy
36 billing errors made by the transmission and distribution utility within one billing cycle of
37 the error and provide written confirmation to the customer and the project sponsor
38 describing the error and what was done to correct the error. The commission may direct a
39 transmission and distribution utility to pay to a customer any costs the commission finds to
40 have been incurred by the customer as a direct result of that transmission and distribution
41 utility's billing error.

