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On Behalf of Industrial Energy and Consumer Group
In Opposition to
LD 1986, An Act Relating to Net Energy Billing and Distributed Solar and Energy Storage Systems
Joint Standing Committee on Energy, Utilities and Technology
May 24, 2023

Senator Lawrence, Representative Zeigler, and Members of the Joint Standing Committee on Energy, Utilities and Technology, I am Tony Buxton of Preti Flaherty, here to testify for IECG in opposition to LD 1986, An Act Relating to Net Energy Billing and Distributed Solar and Energy Storage Systems.

There was no report to EUT from the DG 2.0 Stakeholder Group. The report is only from GEO and its consultant. There was no vote allowed in which the appointed Stakeholder Group could approve or reject the report. Stakeholders expected there would be.

Many appointed Stakeholders and others expressed grave concerns about the draft and final report. Those included MPUC, OPA, CMP, Versant, IECG and NEB developer Bob Cleaves. Most submitted written comments. of which IECG's comments are attached to my testimony here today.

The DG 2.0 report was prepared by the GEO and staff and consultant. The consultant was the same one that advised GEO in 2019 on the adoption of NEB and predicted a rate increase of 1%. The consultant met only with Democratic committee members and NEB supporters in 2019.

During the Stakeholder process the "regional "report advocated by the consultant and now included in 1986 as a mandate to MPUC was severely criticized as having no connection to the cost of developing NEB but instead only to the prices paid for NEB in other New England states. Thus, if the NEB industry succeeded in other states in establishing rates unrelated to cost or value, as they did in Maine, the data is unrelated to cost, fairness or equity.

The bill's concept of pushing costs onto electric utilities and thus having ratepayers avoid them is inconsistent with all regulatory law, accounting and

procedure. If costs are found, which they will be in small amounts, they will be Transmission and Distribution costs recoverable in rates with standard utility return on equity. We might wish it were different; it isn't.

The acceptance of federal funds is fine; the Committee might want to decide whether it agrees with GEO that storage is the highest priority, or whether actual rate reduction or heat pumps might be more important. IECG regrets to note the striking similarities of this circumstance to the surprise birth of NEB in 2019.

The Committee, as it was in 2019, apparently is in its waning days with little time for deliberation. The Committee is asked to rely on the work of the same consultant to GEO, once again with no opportunity to question the consultant. This time, the bill requires use of the regional report on which the consultant relied, with no opportunity to test or hear critiques of the report. Relying on that report and the consultant, the bill strongly implies that the PUC can and will materially reduce the cost of NEB.

This, unfortunately, is no more true than was the 2019 prediction of a 1% rate increase. Unfortunately, all NEB costs will be paid by ratepayers. It is not prudent or productive to hope otherwise.

I will take any questions, Thank you.

Industrial Energy Consumer Group (IECG) Initial Comments on LD 936 Proposed Framework for Distributed Generation "Successor Program" (Successor Program)

IECG welcomes the opportunity to offer initial comments on the Successor Program proposal created in partial response to LD 936. IECG's comments will also address the command of LD 936 that the Distributed Generation Stakeholder Group (Group) report summarize the lessons learned from the existing Net Energy Billing (NEB) program. IECG combines these topics because prudence dictates understanding the failures of existing NEB before creating another NEB program. That has not been attempted by the Group, so true to ancient wisdom, we risk repeating, in part, the most destructive climate and energy mistake in Maine history.

IECG understands and respects that the Successor Program is a good faith attempt to fulfill the Legislature's request in LD 936 for design of an NEB program more limited in project size and nature than the existing NEB program. As The Successor Program states the Proposal is not any entity's current recommendation, and clearly is not IECG's. The Successor Program allows the basic concepts underlying NEB to be further tested for usefulness. Without the test proposal, some would contend that the flaws in existing NEB would be corrected by certain constraining limitations, such as "smaller" projects.

The dynamics of the Successor Program, however, clearly reveal that the very same flaws that impair existing NEB lie at the heart of NEB itself. The only possible material difference is a —possible— reduction in the total cost of the mistake to ratepayers.

The public interest in more effective climate mitigation and lower electricity costs is not advanced by another NEB mistake, even if it possibly will be a smaller mistake than the mistake of existing NEB. Instead, the public interest is best served by rigorously pursuing cost-effective beneficial electrification and promoting the cost-effective "greening" of the entire grid though renewable energy projects at scale the "biggest bang for the buck". Many cost-superior opportunities are available to Maine. While Maine is making progress in climate mitigation, Maine cannot waste energy investment; Maine has far more mitigation miles yet to travel.

The flaws of greatest significance in existing NEB deserve brief explication:

1. Existing NEB was created entirely by the Legislature with no material input by MPUC or the OPA, and after minimal explanation and public hearing discussion. This dynamic minimized consideration of ratepayer impacts and ratepayer perspectives.

2. The Legislature set the compensation mechanism, or payment rate, based on the current rate that small commercial ratepayers pay for utility delivery service, a cost unrelated to the cost of building and operating NEB of 5 MW or smaller, added to 75% of the current standard offer retail rate, another cost unrelated to the cost of building and operating NEB. As those costs escalate, so does the NEB payment rate. For example, NEB payment rates that began at 12 cents/kWh and 15 cents/kWh for CMP and Versant, in 2021 will be as much as 25 cents/kWh in 2023. These increases also are unrelated to the cost of building and operating NEB.

3. The Legislature also set no binding limitation on the total number of NEB projects or the total MW of the program, thereby setting no limit on the total cost to be borne by ratepayers. In effect , The Legislature created an "entitlement program" for solar developers and financiers at the expense of Maine ratepayers.

4. The Legislature gave MPUC no authority to limit the payment rate for NEB, the total number of projects or contracted MW, or the total cost to ratepayers. No other energy purchase program ever created by the Legislature has failed to give MPUC such essential powers.

5. Despite multiple subsequent opportunities to limit the amount of NEB and the payment rates for NEB, the Legislature did not act to impose binding limits on NEB MW purchases or to freeze or reduce the original payment rates for NEB. Today, the payment rate continues to escalate without regard to the cost of building and operating NEB and the total MW of NEB projects 2 MW or smaller remains entirely unlimited. Further, the Legislature's "goal "of a 750 MW limit on projects up to 5 MW in size, based on NEB advocate assertions, appears to likely to be at least doubled to 1500 MW for NEB in service by 2025.

6. The Legislature required no competitive bidding in any form to obtain an NEB contract. The nearly simultaneous competitive bidding conducted by MPUC pursuant to other renewables legislation produced solar projects with greater societal benefits (environmental, employment, and grid-supporting) than NEB, but at only at 3-5 cents/kWh for twenty years. This represents payment rates at 25% of the cost of NEB, or even less.

7. The consequences of existing NEB to ratepayers appear increasingly certain. Based on monthly updated reports of NEB activity from CMP and Versant, if all currently active NEB projects come on-line as required by 2025, CMP ratepayers will shoulder additional costs above current rates of $243 million per year, or a total of $5 billion over the twenty- year NEB contracts (See Attachment A). Versant ratepayers will shoulder additional costs of $100 million annually and a total of $2 billion over the twenty- year contracts (See Attachment B). These amounts in only one of many state energy programs approximately equal the entire present cost of delivering service to the ratepayers of each utility.

8. The significant difference between the cost of NEB and solar projects competitively bid by MPUC consumes money ratepayers might prefer to keep to pay their bills, or which could be used to greatly increase the speed of Maine's pursuit of beneficial electrification and thus climate mitigation. For example, the Efficiency Maine Trust has invested in the installation of more than 80,000 heat pumps. Every heat pump frees a Maine family of material reliance on heating oil, propane, or kerosene – all price-volatile, expensive and carbon-rich fuels. Maine's reliance on oil for heat remains at near 60% of all households, the highest in the nation after Alaska. The human and climate toll of this reliance puts in full context the moral error of unnecessary expenditures on NEB.

Examination of the Proposed Successor Program reveals cost-increasing factors similar or identical to certain of those which have made existing NEB exorbitantly expensive:

1. The Successor Program would be designed once again entirely by the Legislature, with no ability of MPUC to determine the size or total number of projects, rates to be paid, total ratepayer cost or to fix discovered malfunctions.

2. The Successor Program would allow only narrowly limited competition, with bidding among those smaller eligible projects meeting only 70% of the target acquisition. The other 30% would receive a fixed price without any competition to further lower the cost. This absence of a rigorous competition mechanism ignores the fact that in a similarly limited previous DG competition, the Commission voided the results because of possible anticompetitive bidder behavior. This is always a risk, and especially in artificially limited competitions.

3. Most importantly, by creating another unjustified size limitation on competition, the Successor Program will cost ratepayers at least twice as much for project output as would be paid by allowing competition without regard to size. There will be no societal benefits that could not be obtained from larger, less expensive projects. In other words, there is no need for, and no public policy justification for, the increased costs. In the alternative, MPUC has existing authority to acquire solar through full competition, which would acquire at least twice as much solar energy for the same total cost as would the Successor Program, also with twice as much delivered societal non-cost benefits.

4. The Successor Program contains untested complexities to achieve societal goals of aiding low-income persons and rewarding locations on brownfield sites, without any MPUC authority to modify the goals, the cost-increasing mechanisms, or otherwise protect ratepayers. Moreover, as the proposal draft acknowledges, these incentives are redundant of large new federal tax incentives enacted in the Inflation Reduction Act to achieve exactly the same objectives. Thus, the only purpose of these incentives is to increase the ratepayer cost by around 10% as a reward for the developer receiving large federal tax benefits of some 20%. This is a classic example of an industry camouflaging its financial benefits. Ratepayer costs would increase by 10% because the developer has received a 10-20% or more in federally subsidized reduction in its costs. This makes no sense. The federal incentives are both efficient and adequate.

5. The Successor Program acknowledges that it is not integrated with existing NEB, including the ongoing and quantitatively unconstrained 2 MW and smaller project NEB incentives. Careful, intelligent integration of any new program is ignored at ratepayer peril and to the glee of developers. For example, some developers are pursuing fuel cell NEB under the existing program for projects of 2MW or less—with the fuel cells powered by natural gas. (Yes, natural gas; read the definitions of Title 35-A carefully). Fuel cells operate above 90% capacity, meaning that a 2 MW fuel cell produces six times the output of a 2 MW solar project, resulting in six times the total cost to ratepayers, while actually increasing Maine's GHG emissions. There is no limit in the number of projects or total ratepayer cost of NEB of

this size. This is the risk to ratepayers created by the Legislature supplanting the MPUC's judgement and fulsome consideration of complex matters.

6. The Successor Program does nothing to change the inequities imposed on the vast majority of ratepayers created by existing cost allocation mechanisms. Currently, as well as under the Successor Program, the cost of energy purchased at above market rates would becomes stranded costs and, apparently, be allocated among all ratepayers. This continues the existing imbalance between project participants, who are subsidized to engage in NEB and thus who save money and all other ratepayers who share equally in the cost. This failure in energy equity becomes glaringly apparent when the proposed program, for example, is compared to solar, purchased at less than half the cost through full competition with no limits on size. This cost-efficient alternative produces little or no stranded costs, and perhaps actually offsets high market costs, and delivers at least twice the societal benefits at such lower cost.

7. Similarly, the Successor Program makes no change to the additional inequity of forcing other ratepayers to pay higher rates to make up for the decreased revenue contributions to the electric utility of the NEB participants. As IECG analysis shows in Attachments A and B, based on MPUC reports, this specific inequity will raise the rates of remaining utility ratepayers by $125 million annually for existing NEB. The Successor Program increases the injustice. No estimate of these ratepayer harms from the Successor Program has apparently been attempted.

Once again, IECG respects that GEO is obligated to prepare the report requested by LD 936 and has done so with highly significant effort and consultant assistance. GEO's administration has been thorough, efficient and diplomatic.

IECG observes, however, the striking continuation of limited interest, at best, in the financial consequences to ratepayers and to Maine's critical climate initiatives of existing NEB at all moments of legislative and governmental consideration. Perhaps the harm is so huge, so awful that we cannot bear to discuss it, much as we look away from a horrible accident.

IECG warned at the creation of NEB of the consequences, but IECG gets no comfort in having predicted the result. Instead, IECG regrets that the monies which will be spent involuntarily by all ratepayers on NEB renewables(that should have cost 25% of the estimated 7 billion NEB will cost) will not be available to be spent where needed most: to take 300,000 Maine households off heating oil and propane with heat pumps, to weatherize the nation's oldest housing stock, to incentivize electric vehicles in the state with the most significant commutes by vehicle and to otherwise aggressively pursue beneficial electrification. Time is not on Maine's side, or the planet's.

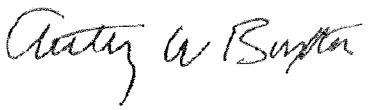
Existing NEB is by far the largest climate mistake in Maine history. It demonstrates the cost of politics and fear triumphing over critical thought. Understanding the causes and scope of the mistake is essential to mitigating the mistake and avoiding its repetition. Here, due to LD 936, the DG Stakeholder Group and GEO are obligated to present the framework of a successor program. Ethan Tremblay and GEO and its consultants have done their best; the DG Stakeholder Group will offer useful comment, as IECG attempts here. But there is a reality that time has taught and that we must acknowledge.

NEB was and remains a terrible mistake. The proposed Successor Program implicitly acknowledges this reality by offering a program with smaller projects, some limited competition and other constraints. Yet the truth is the proposed Successor Program also is a mistake, one whose only virtue is that it is a smaller mistake.

Maine cannot afford any further climate mistakes. If Maine needs more DG, MPUC has existing authority to acquire it on a fully competitive basis, and therefore at lowest cost and most efficiently acquired social benefits.

IECG recommends that the only Successor Program which should be enacted would be to vest in MPUC authority to acquire the resources and cause the funding necessary to accomplish beneficial electrification at the lowest cost to Maine ratepayers. This would be consistent with the recent legislative addition of climate mitigation to the Commission's virtual charter. The Legislature in 1913 created the Commission to oversee the complex world of utility development and regulation. A century and more later, history teaches another timely lesson.

Respectfully submitted,



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