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**Testimony Neither For nor Against
LD 1465, “An Act to Amend the Calculation of Tariff Rates and Billing Credits Under
Net Energy Billing”
January 9, 2024**

Senator Lawrence, Representative Zeigler and distinguished members of the Joint Standing Committee on Energy, Utilities, and Technology,

My name is William Harwood, here today as Public Advocate, to testify neither for nor against LD 1465, “An Act to Amend the Calculation of Tariff Rates and Billing Credits Under Net Energy Billing.” We thank Senator Harrington for proposing needed reform to the NEB program. As the OPA has consistently repeated, the NEB program is more expensive than it needs to be to effectively support Maine’s climate goals, and it’s placing a heavy financial burden on Maine ratepayers.

There has been much criticism of the OPA by the developers who take advantage of NEB, as well as by their lobbyists, claiming that the OPA opposes solar and our estimates of the cost of the NEB program are exaggerated, like chicken little claiming, “the sky is falling.” First, and foremost, I want to be crystal clear, the OPA supports solar and fully recognizes the benefits of expanding renewable energy in meeting our climate goals. Our criticism of the specific NEB program should not be misinterpreted as opposition to solar.

Despite efforts to discredit our NEB cost estimates, the OPA’s estimate of the burden on ratepayers of \$220M/yr. or \$4B over the next 20 years is proving to be reasonably accurate and not theoretical or overstated. In fact, last July, the PUC allowed CMP and Versant to start recovering over \$100M/yr. of NEB subsidy costs which are now reflected in the utility bills of ratepayers. As more projects begin commercial operation every week, it’s becoming clearer that another \$100M+ of rate recovery per year will need to be approved in the next couple of years. CMP is including a statement on its residential bills that ratepayers are being charged \$8/month just for so-called “public policy” costs and the CMP web site indicates that \$6.11 of this monthly



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charge is just for the NEB program. Some large industrial customers are paying approximately \$20,000/month or more in NEB charges.

The most recent PUC filings by CMP and Versant indicate that another 130 MW of NEB projects have come online over the past six months and the program now provides a subsidy for over 2,000 operational projects representing approximately 640 MW of capacity – bigger than the 610 MW Wyman 4 facility in Yarmouth and almost as big as the former Maine Yankee nuclear facility in Wiscasset. We have little doubt that the program will grow substantially in 2024 as many more NEB projects come online.

If there were any doubt about the actual impact on ratepayers, one need only look at the PUC's ongoing highly controversial efforts trying to fairly spread NEB costs across all ratepayers (PUC Dkt. No. 2023-00230). All parties in this case are claiming that some other group of ratepayers should be paying more of the NEB costs, so they can pay less; while OPA is left trying to protect residential ratepayers from being left holding the bag.

Ironically, NEB costs are having an adverse impact on other renewable energy projects. Many wind and solar developers with projects too large to qualify for NEB subsidies are among those complaining the loudest. Each of these generating facilities purchases energy when the facility is not generating power (called "station service") and they claim that the level of NEB costs they are being hit with threatens the financial viability of their renewable energy projects. These renewable energy projects, including solar projects, selected by the PUC through competitive solicitations, are projected to save ratepayers tens of millions of dollars per year. In effect, NEB has become a tax on affordable solar energy to pay for expensive, unaffordable solar energy.

The Legislature adopted LD 1986 last session to try to trim some of the costs of the NEB program. At the time, the OPA expressed skepticism about the potential savings represented in LD 1986, but the Legislature has spoken. LD 1986 should be given a chance to work before we attempt any further reforms that may be needed. In fact, the OPA has taken the



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initiative of attempting to implement LD 1986 by filing the attached Petition with the PUC on October 10 (Dkt. No. 2023-00281). We're sad to report that the NEB developers have shown little interest in helping to implement LD 1986. However, the PUC has finally taken steps just last week to begin implementing LD 1986 (Dkt. No. 2023-00335).

While OPA sees some value in LD 1465, the bill appears to be making the same mistake the Legislature made when it adopted LD 1711 in 2019. LD 1465 sets the precise amount of the NEB subsidy by legislative fiat. With all due respect, the OPA is skeptical of your ability in the couple of hours available for this hearing and work sessions on this bill to get the amount of the subsidy right. If it is too low, we will not have enough renewable energy to meet our climate goals and if it is too high, ratepayers will be burdened by paying unnecessary costs. We believe that the better approach, reflected in Rep. Foster's NEB reform bill last year (LD 1347), is to direct the PUC to set the amount of the subsidy. With three experienced and competent full time Commissioners supported by a staff of approximately 75, the PUC can devote the hundreds of hours of research and analysis needed to figure out the right amount of the subsidy.

LD 1465 is an important reminder that we have a program that is heavily burdening ratepayers and needs further reform. We hope that in due course this Committee will take up this issue again and give clear direction to the PUC to reset the subsidy to an amount that is fair to both ratepayers and NEB developers.

Thank you for your time, attention, and consideration of this testimony. The Office of the Public Advocate looks forward to working with the Committee on LD 1465 and will be available for the work session to assist the Committee in its consideration of this bill.

Respectfully submitted,

A handwritten signature in black ink that reads 'William S. Harwood'.

William S. Harwood
Public Advocate

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

**MAINE OFFICE OF THE PUBLIC
ADVOCATE**

**RE: Petition to Open Proceeding for
Distributed Generation Procurement
Under New Legislation (LD 1986)**

Docket No. 2023-00XXX

**OFFICE OF THE PUBLIC
ADVOCATE'S PETITION TO
INITIATE PROCEEDING FOR
DISTRIBUTED ENERGY
PROCUREMENT**

October 20, 2023

Pursuant to 35-A M.R.S. § 1702(3) and Section 6 of P.L. 2023 ch. 411 (LD 1986), the Office of the Public Advocate (the OPA) requests that the Commission open a proceeding for distributed generation (DG) procurement that has the potential to reduce the costs of the net energy billing (NEB) program. LD 1986 will become effective on October 25 and time is of the essence to reduce the costs of the NEB program. Accordingly, the OPA requests that the Commission open a proceeding now so that it can design a program to be implemented once the law becomes effective.

BACKGROUND

According to recent reports filed by CMP and Versant Power, the net ratepayer costs of NEB projects that are already operational are more than \$125 million per year.¹ The OPA estimates that the cost will rise to approximately \$220 million per year once additional projects are completed. Because NEB agreements are for 20 years, if nothing is done to reform the program, Maine's ratepayers could pay more than \$4 billion in NEB costs.

To mitigate the ratepayer impact of NEB, the Legislature passed LD 1986, which authorizes the Commission to initiate a competitive solicitation for DG projects that would otherwise enroll in NEB under either the kWh or the tariff rate programs. The intent is to incentivize NEB projects to opt into the DG procurement and accept a lower kWh rate for

¹ Docket No. 2020-00199 CMP August Report; Versant August Report.

energy generated than would be provided under NEB, thereby reducing the costs recovered from ratepayers in stranded cost rates. In return, the project would be awarded a binding power purchase agreement (PPA) with a utility, which is likely constitutionally protected from future legislative changes.

It is critical that the Commission initiate a proceeding as soon as possible to allow this option to provide as many projects as possible with an alternative to the NEB program. Once a project is operational and has executed agreements with offtakers, it will be much more challenging to convert it to a fixed price PPA with no offtakers. The statutory deadline applicable to larger NEB projects is the end of 2024, which means that in less than 16 months, all projects must be operational, unless they receive a good cause waiver from the Commission.

PROPOSED PROCUREMENT

Procurement Design

Unlike a typical Commission procurement for renewable energy, the structure of this solicitation must recognize that the targeted DG projects have an attractive alternative: they can remain in the NEB program and receive the generous subsidies provided by that program. Given this reality, the Commission's typical approach to procurements may not be successful because bidders do not have the same incentives.

Rather than solicit confidential bids, the OPA proposes that the Commission select a contract price that, in its judgment, would provide significant cost savings to ratepayers compared to the rate that would be paid under NEB, while still allowing the DG project owner to earn a fair return on its investment. After selecting the contract price, the Commission would allow projects to opt into a contract at that price. The Commission could use the standard PPA language that it uses in other renewable energy solicitations for the other terms of the contract.

Based on multiple studies regarding the cost to develop a community solar project less than 5 MW in size, the OPA proposes a fixed price of 10 cents/kWh over the term of

the contract.² As discussed in detail below, multiple independent assessments of the levelized cost of energy (LCOE) for community solar confirm that this is a fair price.

- The Governor's Energy Office retained an expert for the Distributed Generation Stakeholder Group that determined a wholesale PPA for a ground mounted solar facility completed in 2024 would cost \$66/MWh or 6.6 cents/kWh in 2022 dollars.³
- According to a 2021 study by NREL, the real LCOE for a commercial rooftop solar array in 2020 dollars is 8.3 cents/kWh. Given that rooftop arrays are typically more expensive than ground mounted, this estimate is likely high for Maine NEB projects, which are primarily ground mounted.⁴
- According to another study prepared by Lazard, the LCOE for community solar is between \$49 and \$155/MWh after accounting for federal tax subsidies. The mid-point of this range is \$102/MWh or 10.2 cents/kWh.⁵

This rate will also save ratepayers millions in stranded cost rates. Assuming an average rate of 15 cents/kWh⁶ will be paid to NEB projects that are not yet operational, a 10 cent/kWh rate will save approximately \$438,000 per year⁷ in stranded costs for each 5 MW project diverted from NEB. For every 100 MW of projects that elect to enter into PPAs, the savings to ratepayers will be approximately \$8.8 million per year, or 4% of the \$220 million

² It is important to recognize that, like the NEB programs, the developer would retain the renewable energy credits (RECs) associated with generation from a project selected in the solicitation. This provides the developer an additional revenue stream and therefore the actual revenues to the developer would be greater than 10 cents/kWh under the OPA's proposal.

³ DG Stakeholder Report Appendix at 12, available at https://www.maine.gov/energy/sites/maine.gov.energy/files/inline-files/Final%20Report%20of%20the%20DG%20Stakeholder%20Group_with%20appendix.pdf.

⁴ NREL, U.S. Solar Photovoltaic System and Energy Storage Cost Benchmarks: Q1 2021, available at <https://www.nrel.gov/docs/fy22osti/80694.pdf>.

⁵ Lazard, LCOE, April 2023, available at <https://www.lazard.com/research-insights/2023-levelized-cost-of-energyplus>.

⁶ The approximate 15 cents/kWh average rate is for future projects that will receive the reduced tariff rate in 35-A M.R.S. § 3209-B. The average rate for operational tariff rate projects is more than 23 cents/kWh. Docket No. 2020-00199 CMP August Report.

⁷ Assuming a capacity factor of 0.2.

estimated annual stranded cost of NEB. These savings will help stabilize future stranded cost rates for CMP and Versant.

Any contracts awarded under the solicitation would not have any subscribers. The OPA recognizes that any operational projects that are selected in the solicitation will need to renegotiate or terminate their contracts with subscribers. The OPA assumes that if such a project chooses to participate, the rate will be sufficient compensation to allow the project owner to renegotiate or terminate its private contracts with subscribers.

Requirements for Participation

To prevent the DG procurement from increasing ratepayer costs, participation should be strictly limited to projects that meet the statutory deadlines to participate in NEB.⁸ These deadlines are set forth in 35-A M.R.S. § 3209-A and include a requirement that the project reach commercial operation by the end of 2024. The OPA recommends that the Commission include a condition precedent in any contract awarded in the procurement that the project satisfy all requirements of 35-A M.R.S. § 3209-A. If the project fails to meet a required deadline and does not receive a good cause exemption from the Commission, the DG contract would terminate, and the project would be ineligible for NEB.

Respectfully submitted,

/s/ William S. Harwood

William S. Harwood
Maine Public Advocate

/s/ Brian T. Marshall

Brian T. Marshall
Senior Counsel

⁸ The OPA recognizes that under LD 1986, projects between 1-2 MW in size that do not meet the 2024 deadline may be allowed to participate in a Commission procurement if they satisfy other development conditions. Because these projects are in a different category and face different incentives, they should be subject to a different procurement process.