**LD 1321, An Act to Reform Net Energy Billing by Establishing Limitations on the Programs' Duration and Compensation**

Senator Stewart
Representative Foster
Members of the Energy, Utilities and Technology Committee

My name is Amy Turner. I am the CEO of Fox Islands Electric Cooperative, a nonprofit, member-owned, rural electrification utility, and the CEO of Fox Islands Wind, a 4.5 MW wind farm that is a wholly-owned subsidiary of Fox Islands Electric. I am testifying on behalf of the Dirigo Electric Cooperative Companies ("Consumer-Owned Utilities" or "COUs"), which include Van Buren Light & Power, Houlton Water Company, Eastern Maine Electric Cooperative, Kennebunk Light & Power District, Madison Electric Works, Brunswick Landing Electric Utility, Fox Island Electric Cooperative, and Isle Au Haut Electric Power Co. For the reasons set forth herein, the COUs testify in support of LD 1321.

The COUs support cost-effective renewable energy development that equitably benefits all customers. The COUs recognize Maine's concerns about climate change and understand that Net Energy Billing ("NEB") encourages the development of small-scale renewable energy resources. However, the current NEB structure increases utility costs, impacts operations, and frustrates renewable energy goals. By adopting a supply-only offset, limiting facility size, and implementing a cap based on peak demand (a requested amendment), LD 1321 could balance competing interests with self-generation and promote the COU's opportunity to invest in cost-effective renewable energy.

***Requested Amendment***

In addition to the language provided in LD 1321, the COUs request that the cap in Chapter 313 of the Maine Public Utilities Commission's Rules be codified for NEB under 35-A MRSA §3209-A. The Commission has consistently recognized that the NEB mechanism results in a shift of fixed utility costs from NEB customers to non-NEB customers with corresponding impacts on the rates of non-NEB customers.[1] The Commission adopted a "cap" on net billing load that triggered a review of the benefits and costs of "additional net billing."[2] The Commission's initial notification requirement was triggered when the net billing load reached 0.5% of its total peak load, which increased to 1% in 2016, and then to 10% in 2019.[3]

On April 1, 2025, the Commission denied FIEC's request for a waiver of its obligations to enter into new NEB agreements, having reached 21.30% of its peak demand.[4] Since filing a request for a waiver, FIEC's NEB load has increased to 23.4% of its peak demand. To our knowledge, FIEC is the first utility in Maine where NEB pursuant to §3209-A has reached and exceeded 10% of the cumulative capacity of peak demand. NEB in FIEC's territory is creating an unsustainable cost shift, threatening grid reliability, and frustrating renewable energy goals. FIEC's Notification and Waiver Request and the Commission's Order are attached as Exhibit A. The Commission directed FIEC to seek relief through legislative amendment.

Delaware, Massachusetts, and Rhode Island have incorporated caps into their net metering standards, 5%, 7%, and 10% of aggregate peak demand, respectively. The COUs propose a 10% cap on §3209-A NEB for COUs to implement and codify the level established by the Commission in 2019 pursuant to Docket No. 2019-00076. LD 1321 may be amended as follows:

35-A MRSA §3209-A, sub-§2 is amended to read:

2. Financial interest required. The commission shall allow a customer to participate in net energy billing if the customer has a financial interest in a distributed generation resource or in a generation resource that has a net energy billing arrangement on the effective date of this section, including facility ownership, a lease agreement or a power purchase agreement~~.~~; provided that a consumer-owned utility shall not be required to allow additional customers to participate in net energy billing once the cumulative

[1] Commission Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2016-00222, March 1, 2017, 2.
[2] Commission Order Adopting Rule and Statement of Factual and Policy Analysis, Docket No. 98-00621, December 10, 1998, 6.
[3] Id. at 11; Commission Order Adopting Rule and Statement of Factual and Policy Analysis, Docket No. 2019-00076, July 31, 2019, 5 (a 3% cap was initially proposed).
[4] Commission Order, Docket No. 2025-00076, April 1, 2025.

capacity of net energy billing generating facilities reaches ten percent of the utility's peak demand.

***NEB Customers Shift Costs to Non-NEB Customers***

Utilities have a high fixed cost to construct, operate, and maintain the transmission and distribution system, from clearing rights-of-ways, providing metering systems, and installing transformers, cable, substations, and other equipment necessary to provide reliable electricity to customers 24 hours a day in all types of weather to providing excellent customer service and investing in new technology. COUs traditionally collect fixed costs on a volumetric (kWh) basis. Historically, the amount of kWh a customer consumes reflects the amount they use the system and, therefore, determines the amount they should pay for the fixed costs to construct and operate that system.

NEB does not work with the volumetric rate model because NEB customers' use is not reflected in the kWh they consume. NEB customers offset kWh received from the utility with kWh the customer generates and delivers to the utility, and Maine's NEB laws require utilities to offset all kWh usage charges, including kWh delivery charges designed to recover the utilities' fixed costs. Because NEB customers' bills typically net zero or near zero kWh, NEB customers do not pay their share of the utilities' fixed costs.

NEB customers rely on utilities to provide and operate a reliable, well-maintained grid, without which it would be impossible to interconnect their rooftop solar arrays. NEB requires interconnection with and access to the grid to deliver self-generated electricity to the grid, store electricity on the grid, and receive electricity from the grid. NEB customers effectively use the utility grid like a battery to store unused electricity as a credit against future use.

Arguably, NEB customers should pay for grid transaction services like other utility participants who receive, deliver, and export or "wheel" energy across infrastructure they do not own. Providing the infrastructure and services to serve numerous self-generators is costly. However, Maine law was enacted to prevent public utilities from establishing higher rates or charges for NEB customers.[5] Charging customers for using the utility system according to how they use it should not be considered discriminatory against NEB customers but an issue of fairness and equity to all utility customers.

As more customers take advantage of NEB and fewer fixed costs are paid into the system, utilities are required to raise rates to recover the system's fixed costs. While some costs are recovered through minimum charges paid by all customers, significant rate increases are on delivery charges that NEB customers can offset, leaving non-NEB customers to pay. Non-NEB ratepayers receiving service from COUs and investor-owned utilities pay utility fixed costs for NEB customers – not shareholders, investors, or other third parties. Non-NEB customers who pay NEB customers' fixed costs include low-income and aging populations, many of whom live on fixed incomes and government assistance and either cannot afford rooftop solar installations or do not own the place they call home. Initiatives such as "Solar for All" attempt to solve the negative impact of NEB on low and fixed-income customers. However, it expounds the problem for utilities by shifting more fixed costs to non-NEB customers, resulting in higher electric rates burdening Maine's citizens.

### *NEB Conflicts with Principles of Maine Law that Protect Ratepayers*

Public utilities are required by Maine law to charge just and reasonable rates for services[6] regardless of customer-owned infrastructure. Maine law prohibits utilities from charging or collecting less compensation for services rendered in consideration of the person furnishing a part of the facilities incident to the service.[7] It is also unlawful for public utilities to give any undue or unreasonable preference, advantage, or disadvantage to a particular

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[5] 35-A M.R.S.A. §702(2) Solar energy. No public utility providing electric or gas service may consider the use of solar energy by a customer as a basis for establishing higher rates or charges for energy or service sold to the customer.

[6] 35-A M.R.S.A. §301(2) "The rate, toll or charge, or any joint rate made, exacted, demanded or collected by any public utility for production, transmission, delivery or furnishing of electricity, gas, heat or water; for communications service; or for transportation of persons or property within this State or for any service rendered or to be rendered in connection with any public utility, shall be just and reasonable."

[7] 35-A M.R.S.A. §701(1) No public utility may demand, charge, collect or receive from any person less compensation for any service rendered or to be rendered by the public utility in consideration of the person furnishing a part of the facilities incident to the service.

person.[8] These laws were enacted to prevent utilities from discriminating between customers, charging some customers more in order to charge other customers less – precisely what NEB mandates utilities do.

When NEB customers' kWh delivery and receipt net out and that cancellation applies to transmission & distribution services the NEB customer did not provide, the NEB customer receives transmission and delivery services for free in direct violation of 35-A M.R.S.A. § 703(1), (2), which prohibits utility customers from receiving free or special rates at less than the rate named in the utility's tariff schedules.[9] Free and special rates are allowed under certain circumstances – NEB is not enumerated in § 703 and should not be one of those exceptions.
The COUs support LD 1321 because it restores equity to utility rates by only offsetting supply charges, making NEB an "energy-only" offset.

***The COUs Support Self-Generation with an "Energy-Only" Offset***

The COUs agree that they should pay for the energy they receive from NEB customers. The COUs also support their customers' desire to self-generate. A cost-based, nonprofit operation of a utility provides the flexibility to recover the utility's fixed costs while being responsive to customers' needs and desires for modern energy supply options and reducing reliance on fossil fuels. The COUs balance the competing interests of customers by applying a cost-based standard aimed at equitably providing reliable and affordable service to all customers.

The COUs recognize Maine's interest in facilitating the use of small-scale renewable generation that serves individual customers' needs. In the Maine Public Utilities Commission's 1998 order adopting rules for NEB following the restructuring of the utility industry, the Commission decided "not limit net billing to the generation portion of the electricity bills, but [to] apply it to T&D

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8 35-A M.R.S.A. §702(1) Unjust discrimination. It is unlawful for a public utility to give any undue or unreasonable preference, advantage, prejudice or disadvantage to a particular person.
9 35-A § M.R.S.A. §703(1), (2). Free or special rates prohibited. No person may knowingly solicit, accept or receive any rebate, discount or discrimination in respect to any service rendered, or to be rendered by a public utility, or for any related service where the service is rendered free or at a rate less than named in the schedules in force, or where a service or advantage is received other than is specified.

charges only to the extent they are usage sensitive."[10] However, the Commission also stated, "This approach mirrors the results of a customer who invests in energy efficiency. Customers may use their own generation to offset the total price of electricity *but must pay any fixed charges designed to cover the costs of T&D system to which the customer remains connected*."[11]

In its order, the Commission addressed CMP's concern that "the Commission would adopt a rule that potentially allows net billing customers to benefit at the expense of other ratepayers."[12] The Commission opined that NEB costs have been "extremely small" and the cap on net billing load and forfeiture of unused credits (which no longer applies) should address CMP's concerns. The Commission balanced "net billing as a means to encourage the development and use of small-scale renewable facilities" with "the resulting costs to utilities and their ratepayers…".[13] There is now an imbalance between NEB and costs to ratepayers, which is resulting in calls for repeal or change as set forth in proposed bills LD 32, LD 257, LD 450, LD 515, and LD 1321.

The COUs advocate for a new balance between NEB and non-NEB customers based on the value of the electricity NEB customers provide to the utilities without compensation for transmission & distribution services that they do not provide. In the article "Solar Power is Cutting Daytime Electricity Demand on New England's Grid," Stephen Singer unknowingly demonstrated the utility issue with NEB.[14] Singer's graph below shows daytime demand being met by rooftop solar, followed by a peak electric demand at about 6:00 p.m. Singer accurately conveyed that rooftop solar does not generate electricity during peak periods, which are typically the most expensive periods for grid electricity and form the basis for utility capital infrastructure investments.

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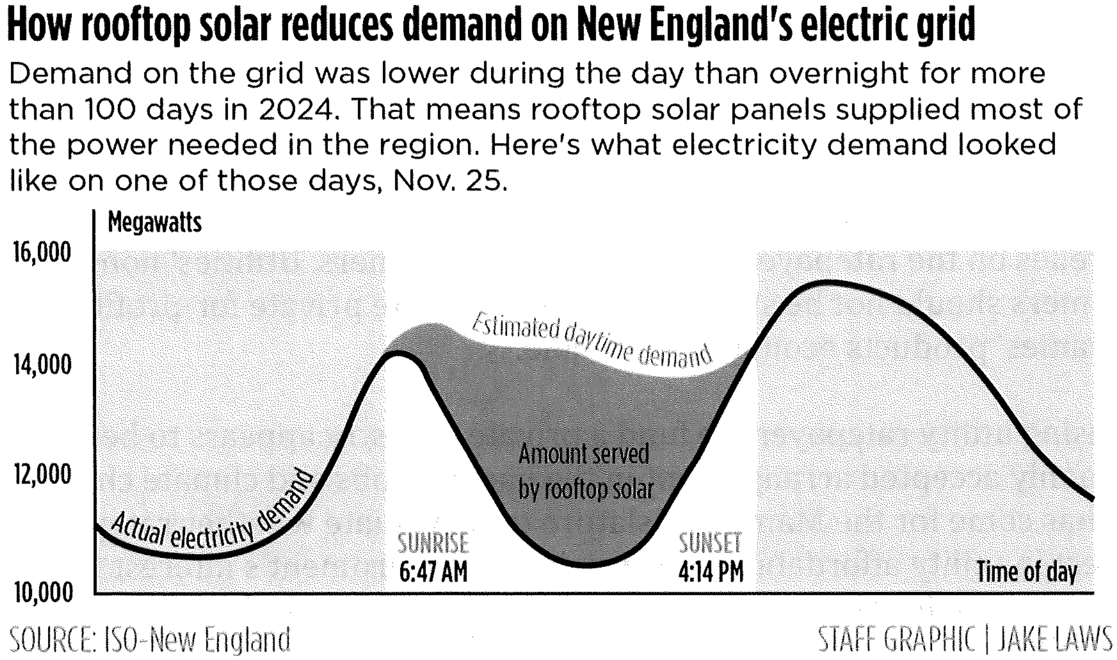
[10] *Order Adopting Rule and Statement of Factual and Policy Analysis, Customer Net Energy Billing (Chapter 313)*, State of Maine, Public Utilities Commission, Docket No. 98-621, December 10, 1998, 5.
[11] *Id.*, (*emphasis added*).
[12] *Id.* at 6.
[13] *Id.* at 8.
[14] Singer, Stephen. "Solar Power is Cutting Daytime Electricity Demand on New England's Grid." Portland Press Herald, January 3, 2025. Available at https://www.pressherald.com/2025/01/03/solar-power-is-cutting-daytime-electricity-demand-on-new-englands-grid/ last visited January 31, 2025.

Figure 1: Graphic attributed to Stephen Signer's article, "Solar Power is Cutting Daytime Electricity Demand on New England's Grid."




Utilities must construct, operate, and maintain a system to meet peak demand, which continues to increase even as net kWh sales decrease due to NEB. Solar generation midday does not typically offset peak demand or capacity charges or defray the utilities' costs of meeting that demand.

Utilities should compensate NEB customers for the electricity they deliver, which utilities would have had to purchase from another source. However, NEB customers should be paying an equitable share of the utility's fixed costs of the system they connect to and use for NEB benefits.

## *Confronting the NEB Subsidy*

Utilities asking customers to pay for the services they receive should not be controversial. However, NEB is contentious because rooftop solar is not a feasible investment for most individuals without shifting costs to non-NEB customers. NEB customers invest in rooftop solar primarily for monetary reasons, as evidenced by the advertising efforts of rooftop solar companies that focus on financial incentives[15] and certain testimony submitted

[15] *See Maine Solar Rebates and Incentives: 2024 Guide*, available at https://www.energysage.com/local-data/solar-rebates-incentives/me/.

concerning LD 32, LD 257, LD 450, LD 515, and LD 1321. Many NEB customers are unaware of how their rooftop solar panels shift fixed utility costs to their neighbors, but the solar industry depends on it.

According to the Coalition for Community Solar Access testimony presented to the Committee on Energy, Utilities, and Technology on April 13, 2023, ending NEB "would create a severe chilling effect on the renewable energy sector in Maine."[16] The renewable energy sector in Maine is a private, for-profit sector that relies on the ratepayer cost shift to get customers. Utilities' non-NEB customers should not be subsidizing costs to make private for-profit companies' products economically viable.

Yet, using utility ratepayers to fund a private industry appears to be a commonly accepted arrangement in the name of jobs and climate change. The time has come for the Maine Legislature to reevaluate whether ratepayers' interest in utility affordability outweighs the government's interest in promoting small-scale renewable facilities. There is an undeniable cost shift under NEB that cannot be blamed on fossil fuel companies (the NEB cost shift is occurring primarily on the transmission & delivery side of the utility business and not the deregulated electricity supply side). Other states, including California, Hawaii, Illinois, North Carolina, Oregon, West Virginia, and Wisconsin have modified their NEB laws. A summary of the actions in other states is included in Appendix A.

### *Promoting Renewable Energy and Affordability*

The COUs are not anti-renewable energy. The COUs have used their limited resources to develop cost-effective renewable projects that benefit all their customers. The COUs request that Maine refocus its efforts to reach 100% renewable energy on utility-scale solar projects interconnected under the Federal Public Utility Regulatory Policies Act of 1978 (PURPA), which accomplishes climate change goals at a much more affordable cost to utility customers than customer-owned NEB systems.

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[16] Testimony in Opposition to LD 1347, Coalition for Community Solar Access, April 13, 2023, available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://legislature.maine.gov/bills/getTestimonyDoc.asp?id=171246, last visited February 3, 2025.

One of Maine's smallest COUs, Fox Islands Electric Cooperative (FIEC), is a leader in island renewable energy development. Pursuant to 35-A §3771, FIEC organized Fox Islands Wind, LLC (FIW), a 4.5 MW wind farm on Vinalhaven Island. FIW provides an average of 60% of FIEC's power requirements. The USDA Rural Utilities Service recently awarded FIW a $3.625 million grant and a $10.875 million loan at 2% interest, pursuant to the Inflation Reduction Act's New ERA program, to repower FIW's wind turbines and install a 1 MW solar array. The New ERA projects are expected to achieve a 99.8% greenhouse gas-free energy supply for FIEC's customers beginning in 2031. FIEC is also developing a 5 MW battery energy storage system to integrate and efficiently use its intermittent renewable energy. FIEC is creating a modern renewable grid to serve its growing customer load.

However, FIEC struggles to recover fixed system costs because it is delivering more kWh at a higher system demand, while its net sales and revenue are decreasing due to NEB. FIEC currently provides NEB benefits to 63 customers across 74 metered accounts. FIEC serves 2,102 meters; NEB customers make up 3.5% of FIEC's customers. In 2024, FIEC delivered 304,564 kW to NEB customers, which was offset by their NEB-related distribution generation credits. Based on FIEC's Residential Delivery Rate of $0.13708/kWh, FIEC did not collect $41,750 of services that FIEC provided – a significant amount considering FIEC's 2024 margin was only $203,120 (the annual difference between operating revenue and cost of service). This loss does not include expenses FIEC recouped through energy and transmission charges or loss of anticipated sales due to customer self-generation. The $41,750 loss in revenue necessitated a rate increase, which increases monthly bills for FIEC's middle and lower-income customers who cannot afford NEB systems, even with State and Federal rebates and tax deductions.

When rates to cover the fixed costs of operating and maintaining the existing system become too high, COUs like FIEC lose their ability to raise rates further to support new renewable energy infrastructure financing. As a result, COUs must sacrifice renewable energy projects that offset demand costs and greenhouse gas for all customers to pay for NEB benefits for customers who can afford their own rooftop system.

As much as COUs would like NEB to be a "win, win, win" for all parties—it benefits some customers to the detriment of others. The COUs work to act in the best interests of all their customers. Without shareholders and profit margins, the economic and social interests of its customers are the COUs only consideration. For this reason, the COUs support LD 1321 applied on a forward-going basis to preserve existing NEB customers' interconnection and access to the grid while promoting energy affordability for all.

### *Changes on a Forward-Basis*

The Maine Legislature should recognize that any changes to NEB would be on a forward-going basis and would not affect current NEB arrangements. The COUs do not advocate any changes to NEB benefits for current customers, which will be grandfathered. As discussed herein, new distributed generation could be interconnected on an energy-only basis, providing equitable compensation to NEB customers for the value of the energy they provide.

Thank you for your time and attention. I'd be happy to answer any questions or provide additional information at your request.

## Appendix A
## Recent State Amendments to Net Energy Billing Laws

| | |
|---|---|
| Arizona[17] | Arizona no longer allows customer-generators to bank credits associated with exported energy. The excess generation is compensated on an avoided cost basis. |
| Arkansas[18] | Beginning in 2020, Arkansas utilities may charge a grid charge to address cost-shifting. |
| California[19] | The Net Energy Metering (NEM) 3.0 tariff reduced net metering compensation rates for new California solar customers by about 75% (from approximately $0.30/kWh to $0.08/kWh). Eliminating the one-to-one NEM credit, California utilities compensate customers only for the excess energy they send to the grid at an avoided cost rate depending on the month, day, and hour energy is exported to the grid (wholesale value of the energy). Customers who applied for interconnection prior to April 14, 2023, were grandfathered under the prior one-to-one NEM credit. |
| Hawaii[20] | Hawaii ended net metering in 2015, grandfathering existing net metering customers. In Hawaii, customers may export excess energy to the grid and get compensated for the energy according to variable time rates. |

17 Arizona Corporation Commission, Docket No. E-01461A-0363, January 4, 2017, available at https://images.edocket.azcc.gov/docketpdf/0000176157.pdf.

18 Code of Arkansas, available at https://advance.lexis.com/container?config=00JAA3ZTU0NTIzYy0zZDEyLTRhYmQtYmRmMS1iMWIxNDgxYWMxZTQKAFBvZENhdGFsb2cubRW4ifTiwi5vLw6cI1uX&crid=021f0c59-6b0f-4ecc-b99a-e4a072c1bd1b.

19 California Public Utilities Commission, Decision Revising Net Energy Metering Tariff and Sub tariffs, December 15, 2022, available at https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M499/K921/499921246.PDF.

20 Hawaii Public Utilities Commission, DER Programs, available at https://puc.hawaii.gov/energy/der/programs/.

| | |
|---|---|
| Illinois[21] | Beginning January 1, 2025, net excess generation will be compensated at a supply-only rate. |
| Michigan[22] | Beginning in May 2019, customers receive compensation for the power supply component only. Existing NEM customers are grandfathered for 10 years from the date of their enrollment. |
| New York[23] | Customers who installed panels after January 1, 2022, must pay a Customer Benefit Contribution charge ranging from \$0.30/kW to \$1.33/kW per month to cover the utilities' fixed cost of business that non-NEM customers pay through the retail energy delivery rate. |
| North Carolina[24] | In June 2017, the North Carolina Legislature enacted a law to establish revised net metering rates that ensure the net metering retail customer pays its full fixed cost of service, which may include fixed monthly energy and demand charges. Retail customers who own their own renewable energy system and are already on an approved net metering rate are grandfathered in at the rate at the time of interconnection until January 1, 2027. |
| Vermont[25] | Vermont has amended its program so that utilities own renewable energy credits from NEB systems, and net excess generation is credited at a lower rate. |

[21] Illinois General Assembly, Public Act 102-0662, available at https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=102-0662.

[22] Michigan Senate Bill No. 271, enacted November 2023, available at https://legislature.mi.gov/(S(b2shnrf1hzbtxqx1u2puuhmh))/documents/2023-2024/billcurrentversion/Senate/PDF/2023-SCVBS-0271-004021.pdf

[23] State of New York Assembly, S. 4006-C, available at https://legislation.nysenate.gov/pdf/bills/2023/a3006c.

[24] North Carolina Statutes, §62-133.8 Clean Energy and Energy Efficiency Portfolio Standards, available at https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_62/GS_62-133.8.html.

[25] State of Vermont Public Utility Commission, Biennial Update to the Net-Metering Program, available at https://puc.vermont.gov/sites/psbnew/files/documents/24-0248-inv-2024-order-re-biennial-update-final.pdf.

Exhibit A

**STATE OF MAINE**
**PUBLIC UTILITIES COMMISSION**

**DOCKET NO. 2025-00076**

**MAINE PUBLIC UTILITIES COMMISSION**
**Notification of Cumulative Capacity and Request for a Waiver of Chapter 313 Regarding New Net Energy Billing Arrangements**

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## FOX ISLANDS ELECTRIC COOPERATIVE, INC. NOTIFICATION AND REQUEST FOR WAIVER

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Fox Islands Electric Cooperative, Inc. ("FIEC") is a nonprofit member-owned electric transmission and distribution ("T&D") cooperative utility organized pursuant to 35-A M.R.S. §§ 3701, et seq. FIEC provides electric service to the Vinalhaven and North Haven Island communities in Knox County, Maine.

FIEC hereby notifies the Maine Public Utilities Commission ("Commission") that it has exceeded the cumulative net energy billing ("NEB") capacity of 10% of peak demand as directed by the Commission's Rules. FIEC's installed capacity of NEB facilities has reached 21.30% of its peak demand. FIEC recognizes that this notice may trigger a Commission review of NEB in a separate rulemaking docket involving all T&D utilities.

Combined with this notification, FIEC respectfully requests that the Commission waive FIEC's obligation to enter into new net energy billing ("NEB") arrangements as of April 1, 2025, for good cause and in the best interest of FIEC's member-owners as set forth herein. The NEB capacity in FIEC's service territory is (1) shifting costs to non-NEB customers at an unsustainable level, (2) impacting FIEC's grid operations, and (3) frustrating FIEC's renewable energy-independent small grid goals.

FIEC is the first electric utility to notify the Commission that it has reached the 10% cumulative capacity threshold.[1] NEB reaching 20% cumulative capacity of peak demand in FIEC's service territory and the cost and operational impacts of such installations substantively support FIEC's request for a waiver in this combined filing. The requested waiver would be narrowly applied to FIEC's service territory on a forward-going basis for the good cause justifications outlined in this combined notification and request and subject to the Commission's future rulemaking.

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[1] To FIEC's knowledge, no other T&D utilities have reached or exceeded the 10% threshold.

I. Notification of Cumulative NEB Capacity

Pursuant to §3(O) of Chapter 313 of the Commission's Rules, FIEC hereby notifies the Commission that the cumulative capacity of generating facilities in FIEC's service territory subject to the provisions of Chapter 313 has exceeded 10% of FIEC's peak demand.

The Commission has consistently recognized that the NEB mechanism results in a shift of T&D utility revenue responsibility from NEB customers to non-NEB customers with corresponding impacts on the rates of non-NEB customers.[2] The Commission adopted a "cap" on net billing load that triggered a review of the benefits and costs of "additional net billing."[3] The Commission's initial requirement notification requirement when net billing load reaches 0.5% of its total peak load was increased to 1% in 2016, and then to 10% in 2019.[4] A review trigger is included in the NEB rules so that the Commission can monitor the operation of the rule and its benefits and costs to ratepayers.[5]

FIEC reached its peak demand of 2,483 kW in February 2023. With the considerable growth in electrification on the Fox Islands due to heat pump installation, FIEC anticipates reaching a peak demand of 2,500 kW in 2025.

Based on FIEC's historical and anticipated demand, the cumulative installed NEB capacity in FIEC's service territory has more than doubled in the past five years, surpassing 20% of FIEC's anticipated peak demand.

| Year | Installed Capacity | Peak Demand | Installed Capacity % of Peak Demand |
|---|---|---|---|
| 2020 | 220.73 kW | 2,231 kW | 9.89% |
| 2021 | 264.73 kW | 2,419 kW | 10.94% |
| 2022 | 307.20 kW | 2,314 kW | 13.28% |
| 2023 | 366.62 kW | 2,483 kW | 14.77% |
| 2024 | 449.41 kW | 2,408 kW | 18.66% |
| 2025* | 532.61 kW (as of 2/17/2025) | 2,500 kW (anticipated) | 21.30% |

*2025 NEB interconnection agreements were approved in 2024 and interconnected in 2025.

The installed capacity of NEB facilities in FIEC's service territory increased slowly from 18.49 kWh to 78.18 kW from 2010 to 2016 – about 10 kW per year. During this period, NEB had a relatively small cost to FIEC in terms of reduced utility revenue and the expenses related to additional equipment. From 2017 to 2020, 142.55 kW were installed, increasing pace to about 47

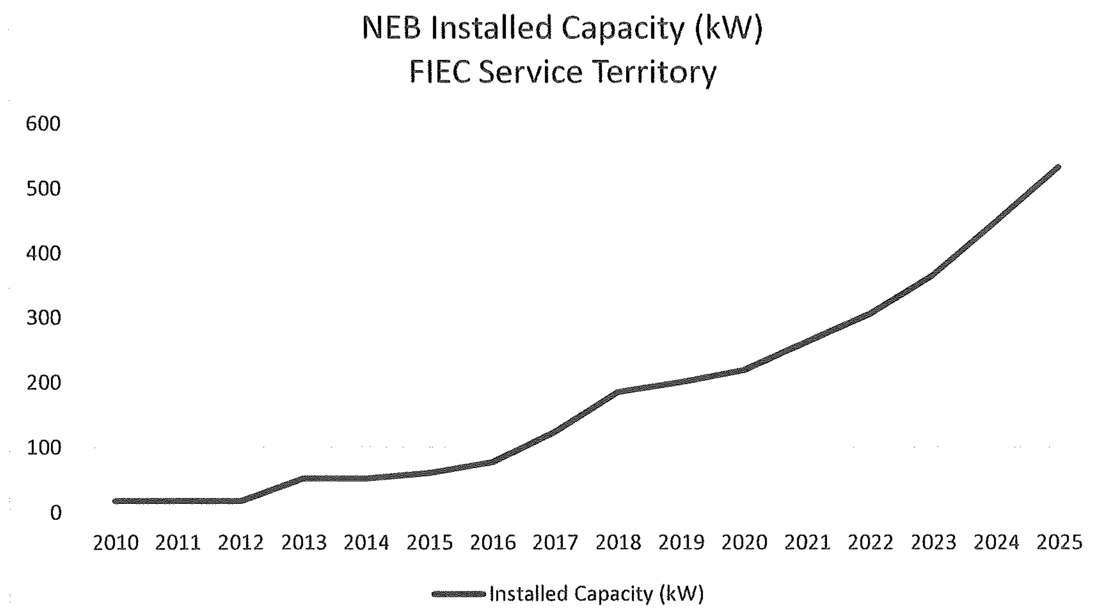
[2] Commission Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2016-00222, March 1, 2017, 2.

[3] Commission Order Adopting Rule and Statement of Factual and Policy Analysis, Docket No. 98-00621, December 10, 1998, 6.

[4] *Id.* at 11; Commission Order Adopting Rule and Statement of Factual and Policy Analysis, Docket No. 2019-00076, July 31, 2019, 5 (a 3% cap was initially proposed).

[5] *Id.*, Commission Order, Docket No. 2019-00076, at 5.

kW a year. From 2021 to the date of this request, installed NEB capacity in FIEC's service territory has increased 267.88 kW – an alarming 67 kW a year.




NEB facilities are not helping to reduce FIEC's peak demand/capacity. Even during morning peaks and in the summer months when daylight extends into the evening, NEB facilities deliver minuscule amounts of power to FIEC during FIEC's peak. The 15-minute interval metering data shows that FIEC is delivering power to most NEB customers during peak periods.

FIEC received the following power from NEB facilities during FIEC's peak demand for 2024:

| Month, 2024 | Peak Demand/Capacity | Peak Time | Received from NEB |
|---|---|---|---|
| January | 2,043.03 kW | 6:45 p.m. | 0.0012 kW |
| February | 1,971.36 kW | 6:15 p.m. | 0.0006 kW |
| March | 1,627.18 kW | 9:30 a.m. | 0.0972 kW |
| April | 1,659.47 kW | 12:30 p.m. | 0.9262 kW |
| May | 1,618.52 kW | 6:15 p.m. | 1.8576 kW |
| June | 1,952.46 kW | 7:00 p.m. | 0.4604 kW |
| July | 2,148.57 kW | 6:15 p.m. | 2.7746 kW |
| August | 2,408.48 kW | 11:30 a.m. | 5.4332 kW |
| September | 1,727.21 kW | 6:15 p.m. | 0.1750 kW |
| October | 1,774.46 kW | 6:00 p.m. | 0.0066 kW |
| November | 1,693.34 kW | 5:45 p.m. | 0.0018 kW |
| December | 2,095.80 kW | 5:30 p.m. | 0.0006 kW |

The rapid increase in NEB facilities is impacting FIEC's ability to provide affordable, reliable service to its customers. As peak demand continues to rise, net sales to pay for the construction, operation, and maintenance of the grid are decreasing. Maintaining an appropriate power factor is also becoming increasingly difficult as more small generators operate on FIEC's small grid.

II. Request for a Waiver

Pursuant to §5 of Chapter 313, FIEC requests that the Commission waive FIEC's obligation to enter into any new NEB arrangements beginning April 1, 2025, until such time as FIEC's peak demand reaches 5.5 MW or earlier if the waiver is superseded by Commission Rules.

§5 of Chapter 313 of the Commission's Rules states:

> Upon the request of any person subject to this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director Electric and Gas Utility Industries, or the Presiding Officer assigned to a proceeding related to this Chapter may grant the waiver.

The authority to grant the waiver is within the Commission's implied and inherent powers, which are interpreted and construed liberally according to 35-A M.R.S. §104. FIEC's request for a waiver was contemplated in the Commission's deliberations as a reasonable means to address the concern that the costs of NEB could become significant over time.[6]

**NEB Statutory Requirements for Consumer-Owned Utilities**

FIEC recognizes that a waiver must be consistent with the purposes of Chapter 313 and Title 35-A of the Maine Revised Statutes. 35-A M.R.S. §3209-B and the Chapter 313 rules implementing the section apply only to investor-owned utilities. Therefore, FIEC requests a waiver specifically for the provisions applicable to consumer-owned utilities in Title 35-A M.R.S. §3209-A and Chapter 313.

Title 35-A M.R.S. §3209-A authorizes the Commission to adopt or amend net energy billing rules. The Commission is required to allow a customer to participate in net energy billing, but only if the customer has a financial interest in a distributed generation resource or in a generation resource with a net energy billing arrangement on the effective date of the section, which was in 2019.

The right to NEB benefits is not absolute or indefinite. The Maine Legislature granted the Commission the authority in §3209-A to adopt and amend NEB rules. The Commission adopted a "cap" on net billing load that triggered a review of the benefits and costs of "additional net billing."[7] The cap is not provided for in §3209-A; the cap was adopted by the Commission and

[6] Commission Order Adopting Rule and Statement of Factual and Policy Analysis, Docket No. 98-00621, December 10, 1998, 11.
[7] *Id.* at 6.

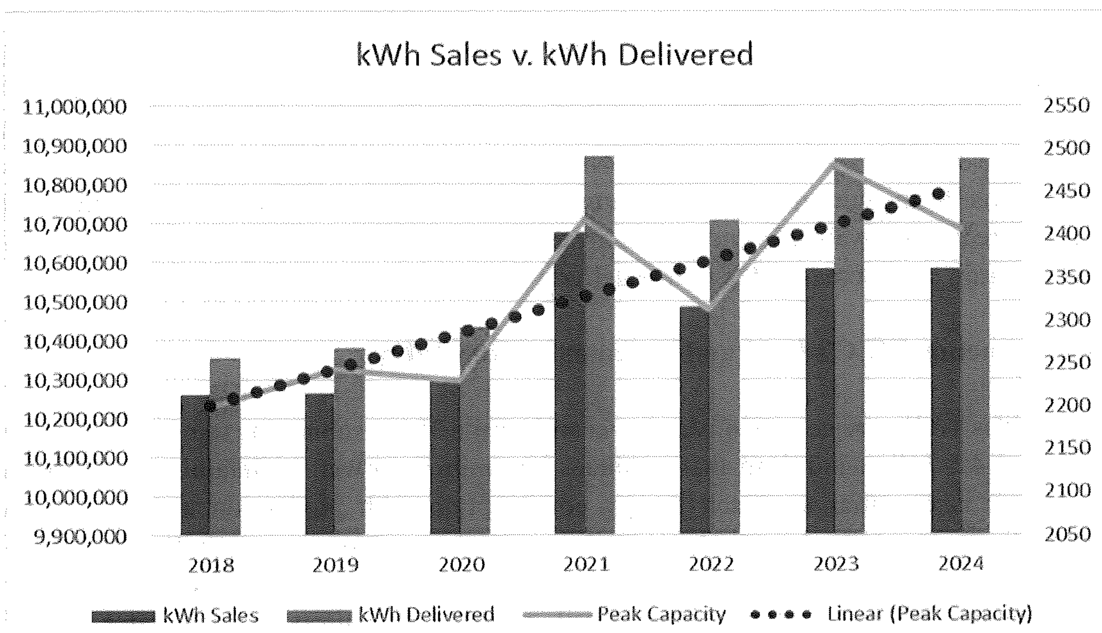
approved at various percentages by the Maine Legislature as part of the major substantive rule review. Therefore, the Maine Legislature has recognized the Commission's statutory authority to apply the cap for good cause at its discretion.

As discussed in the adoption of NEB rules following deregulation, upon notification, the Commission will review the merits of net billing to determine whether new net energy billing arrangements should be entered into on a forward-going basis.[8] FIEC requests the waiver on a forward-going basis, not affecting current NEB arrangements in its service territory.[9] No customers will be deprived of established NEB benefits, which will be grandfathered in FIEC's service territory.

**The NEB Cost Shift to Non-NEB Customers is Unsustainable**

FIEC currently provides NEB benefits to 63 customers across 74 metered accounts; monthly billing is a manual process. FIEC serves 2,102 meters; NEB customers make up 3.5% of FIEC's customers. Because FIEC serves a small, isolated grid, FIEC's delivery revenue losses due to NEB amount to over 20% of its annual margin (difference between revenue and cost of service).

The following graph shows that the gap between kWh delivered and kWh sales (customer-paid delivery service) is growing unsustainable for FIEC's non-NEB customers. Without a waiver, the projection of this trend over the next five years will result in FIEC incurring significant losses and an increased risk of financial instability.




[8] *Id.* at 11.
[9] *Id.* at 11.

Due to the increasing amount of delivered kWh offset by NEB, FIEC can no longer rely on kWh sales to recoup enough revenue to cover system costs. In 2024, FIEC delivered 304,564 kWh to NEB customers, which was offset on customer bills by their NEB-related distributed generation credits. Based on FIEC's Residential Delivery Rate of $0.13708/kWh, this resulted in FIEC not collecting $41,750 of services that FIEC provided – a significant amount for a small, nonprofit utility and more than 2023 losses of $30,577. The not collected amount represents 21% of FIEC's margin (the annual difference between operating revenue and cost of service), which was only $203,120 in 2024.

FIEC passes NEB energy and transmission cost losses on to non-NEB customers monthly in its Transmission Charge and Energy Charge, which are calculated and billed at cost. FIEC typically receives NEB power from 10:00 a.m. to 2:00 p.m. when FIW is generating, and there is not much demand on FIEC's grid. FIEC sells the unused energy to the ISO-NE energy market via Vermont Public Power Supply Authority for $0.03/kW - $0.05/kW, incurring an 8% line loss over FIEC's submarine transmission cable from North Haven to Glen Cove.

During evening peak periods, when NEB customers are neither generating nor contributing power to the system, FIEC must deliver peak power to NEB customers at a cost of $0.11/kW - $0.17/kW, incurring another 8% of line losses as well as transmission charges at a cost of $0.04/kW. Because NEB customers have received kWh credits in their accounts from their non-peak generation, FIEC's non-NEB customers must pay the difference in energy and transmission costs on a monthly basis, the cost being the most significant in the winter months when abundant summer kW credits in NEB accounts offset expensive winter energy.

FIEC is seeking a fixed cost rate increase of 11% pursuant to Commission Docket No. 2024-00355. FIEC proposes to increase fixed monthly costs for all customers to recover costs regardless of how much power is billed. Unfortunately, this approach also raises monthly bills for FIEC's middle and lower-income customers who cannot afford NEB systems, even with State and Federal rebates and tax deductions. At the current rate of NEB implementation, FIEC will need to raise rates again in 2027. FIEC requests a waiver for new NEB arrangements to prevent the cost shift from increasing and avoid future rate increases due to lost delivery revenue.

**NEB is Impacting FIEC's Grid and Threatening Reliability**

FIEC provides T&D service to two islands via an 11-mile 35 kV submarine transmission cable and an on-island 4.5 MW wind farm that produces intermittent power. Maintaining the appropriate power factor is essential to match energy consumption with production and delivery while protecting the system from damage. NEB facilities are inverter-based resources that do not provide the inertia necessary to balance power supply with demand, leaving FIEC to detect and respond to grid imbalances without a conventional fossil, nuclear, or hydropower generator nearby for frequency response.

While FIEC is upgrading its system and modernizing the grid to adapt to these challenges, NEB has reached a cumulative capacity that is now working against FIEC's efforts. So far in 2025, FIEC has responded twice to NEB system issues that blew cutouts and de-energized a portion of FIEC's system. FIEC's system worked correctly, preventing damage to FIEC's infrastructure and other customers. However, FIEC only has four linemen and insufficient resources to respond to the increasing instances of NEB facility issues.

**NEB is Impeding FIEC's Renewable Energy Goals**

NEB is actually impeding FIEC's goals to develop cost-effective, reliable, renewable energy in the State of Maine by diverting resources from small grid and renewable projects, restricting FIEC's rate capacity for new capital infrastructure components.

FIEC is a leader in island renewable energy development. Pursuant to 35-A §3771, FIEC organized Fox Islands Wind, LLC (FIW), a 4.5 MW wind farm on Vinalhaven Island. FIW provides an average of 60% of FIEC's power requirements. The USDA Rural Utilities Service recently awarded FIW a $3.625 million grant and a $10.875 million loan at 2% interest, pursuant to the Inflation Reduction Act's New ERA program, to repower FIW's wind turbines and install a 1 MW solar array. The New ERA projects are expected to achieve a 99.8% greenhouse gas-free energy supply for FIEC's customers beginning in 2031. FIEC is also developing a 5 MW battery energy storage system to integrate and efficiently use its intermittent renewable energy.

The projects are subject to many complex steps, including approval by the Maine Department of Environmental Protection and the Town of Vinalhaven, extensive engineering studies, and various approvals. FIEC recoups project development and long-term debt financing costs from its ratepayers. As revenue decreases due to NEB, FIEC must raise rates to cover the fixed costs of operating and maintaining the existing system. Rate increases perpetuate the affordability gap among FIEC's middle and low-income customers, suppressing FIEC's ability to raise rates further to support new infrastructure financing.

FIEC's request for a waiver is consistent with Maine's policy to encourage electricity generation from renewable sources. The waiver will allow FIEC to use future resources for renewable energy infrastructure that benefits all of its customers, not just NEB customers.

**Conclusion**

FIEC is a consumer-owned utility that operates on a nonprofit basis with limited resources to serve two island communities in a reliable, affordable, and responsible manner. This notification and request was reviewed and approved by FIEC's democratically elected board of directors at its regular public meeting held on February 26, 2025. FIEC supports Maine's renewable energy goals and is implementing them in an equitable and technically feasible manner that benefits all its customers. FIEC requests that the Commission waive FIEC's obligation to enter into any new NEB arrangements until FIEC's peak demand reaches 5.5 MW, at which time FIEC should be able to integrate more NEB facilities without unreasonably shifting costs to other customers or risking the integrity and reliability of its grid. FIEC recognizes that the Commission may supersede the waiver in future rulemaking proceedings. FIEC's request falls squarely within the Commission's authority under §5 Chapter 313 and is consistent with §3209-A and the Maine Legislature's goal in granting the Commission authority to waive future NEB benefits in circumstances like those presented here.

Respectfully submitted this 27th day of February 2025.

FOX ISLANDS ELECTRIC COOPERATIVE, INC.

By: *<u>/s/ Amy M. W. Turner</u>*
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STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2025-00076

April 1, 2025

FOX ISLANDS ELECTRIC
COOPERATIVE, INC.

ORDER

NOTIFICATION OF CUMLATIVE
CAPACITY AND REQUEST FOR
WAIVER OF CHAPTER 313
REQUIREMENTS

BARTLETT, Chairman; SCULLY, GILBERT Commissioners

## I. SUMMARY

The Commission denies Fox Islands Electric Cooperative, Inc.'s (FIEC) request for a waiver of the requirements under 35-A M.R.S. § 3209-A and Chapter 313 of the Commission's rules.

## II. FACTUAL BACKGROUND

On February 27, 2025, FIEC filed a Notification of Cumulative Capacity and Request for a Waiver of Chapter 313 Regarding New Net Energy Billing Arrangements (Waiver Request). In the Waiver Request, FIEC explained that it has exceeded the cumulative net energy billing (NEB) capacity of 10% peak demand with capacity of NEB facilities reaching 21.30% of peak demand. FIEC also requested the Commission waive FIEC's obligation to enter into new NEB arrangement as of April 1, 2025 for good cause and in the best interest of its member-owners. FIEC seeks the waiver because NEB capacity in the service territory is "1) shifting costs to non-NEB customers at an unsustainable level, 2) impacting FIEC's grid operations, and 3) frustrating FIEC's renewable energy-independent small-grid goals." Waiver Request at 1. FIEC made its request pursuant to Section 5 of Chapter 313 of the Commission's Rules.

## III. STATUTORY BACKGROUND

The Legislature amended Title 35-A to expand the scope of Maine's NEB program. P.L. 2019, ch. 478. The amended statute put in place two programs – a kilowatt hour program and a tariff rate program. The kilowatt hour program, which is governed by section 3209-A, allows customers who have a financial interest in a distributed generation facility to receive credits that reduce their electric bills. The tariff rate program, which is governed by section 3209-B, allows commercial and institutional customers who subscribe to a distributed generation project to obtain a monetary credit on their electric bills.

Section 3209-A states that the Commission "shall allow a customer to participate in net energy billing if the customer has a financial interest in a distributed generation resource or in a generation resource that has a net energy billing arrangement on the effective date of this section, including facility ownership, lease agreement or a power purchase agreement." 35-A M.R.S. § 3209-A(2). Section 3209-A(2) does not limit the application of the kilowatt hour program to investor-owned utilities. Section 3209-A(1)(A) defines a "customer" to mean a customer of a transmission and distribution utility in the State. Section 3209-A(3) provides that "[m]ultiple customers of an investor-owned transmission and distribution utility that have distinct billing accounts with that utility may share a financial interest in a distributed generation resource under subsection 2." Therefore, the Legislature expressly provided that a consumer-owned transmission and distribution utility is not required to provide its customers with an opportunity to participate in community solar.

In addition, the opening line of section 3209-B states that the Commission "shall establish by rule, in accordance with this section, a net energy billing program for commercial and institutional customers of investor-owned utilities." Thus, the Legislature expressly provided that consumer-owned transmission and distribution utilities were exempt from the tariff rate NEB program.

Following the 2019 amendments to the NEB statute, the Commission amended Chapter 313 of its rules, which govern NEB. In subsection 2(J) for the definition of "Eligible Facility," the Commission set forth an exception for consumer-owned transmission and distribution utilities: "An eligible facility located in a service territory of a consumer-owned transmission and distribution utility must have an installed capacity of 100 kilowatts or less unless the consumer-owned transmission and distribution utility elects to allow facilities with an installed capacity less than 5 megawatts."

Section 5 of Chapter 313 provides that "Upon the request of any person subject to this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A."

## IV. DECISION

The Commission denies FIEC's request for a waiver of its obligations to enter into new NEB agreements. When the Legislature expanded the NEB program, it provided an express exemption for consumer-owned transmission and distribution utilities with respect to community solar and the tariff rate programs. Section 3209-A, which governs the kilowatt hour program under the more traditional rooftop arrangements, was not limited to investor-owned transmission and distribution utilities. In its rule, the Commission did provide a limitation on project size for facilities seeking to participate in the kilowatt hour program. The Commission does not have the authority to waive FIEC's statutory obligation to allow for NEB arrangements, assuming such arrangements meet eligibility requirements, in its service territory. Relief from this obligation can only be granted through further legislative amendment.

Dated at Hallowell, Maine, this 1st day of April, 2025.

*/s/ Amy Dumeny*
Amy Dumeny
Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
Scully
Gilbert

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.