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Testimony in Opposition
**LD 1860, “Act to Allow Certain Distributed Energy Resources to Participate in the
State’s Net Energy Billing Program”**
May 6, 2025

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

My name is Heather Sanborn, here today as Public Advocate, to testify in opposition to LD 1860, “Act to Allow Certain Distributed Energy Resources to Participate in the State’s Net Energy Billing Program.”

Drawing clear legal lines between when old rules and new rules apply is always a fraught exercise, and particularly so when long development timelines mean that projects initially conceived of in 2020 might still not have been operational four years later. As this Committee has ratcheted back the size of projects that can participate in net energy billing over the last several years, you adopted various developmental milestone dates that projects needed to achieve. You provided for a “good cause exemption” process, which allows projects that miss one of these milestones to nonetheless participate in NEB when the Commission determines, based on the factual record, that external delays led to the missed milestone. The Commission has granted some of these good cause exemptions and denied others, based on the specific facts in specific cases.

When a fact-specific process like this is established by the Legislature, it is appropriate for responsible quasi-judicial body – the Commission in this case – to make its determination applying the law to the specific facts.¹ The losing party in each case then has the opportunity to appeal the decision to the Maine Supreme Judicial Court. And indeed, one of the projects referenced in the bill before you today has taken just such an appeal.²

We do not think it is appropriate to do an end-run around this legal process by coming to the Legislature to request a bill granting a specific project a special bypass of the generally applicable law. Doing so would call into question the outcome of other good case exemption cases where the Commission found that the facts did not warrant an exemption, setting a dangerous precedent and undermining the ability of the Legislature to transition its energy policy from one program to another.

¹ See attached Ellsworth ME Solar, LLC, *Request for Good Case Exemption Pursuant to 35-A M.R.S. § 3209-A*, Docket No. 2024-00108, Order (December 13, 2024).

² Ellsworth ME Solar, LLC, *Request for Good Case Exemption Pursuant to 35-A M.R.S. § 3209-A*, Docket No. 2024-00108, Ellsworth Solar Notice of Appeal (February 11, 2025).

There are other options for these project owners. For example, the Commission has the authority to conduct a competitive procurement so that these projects could obtain power purchase agreements that would allow them to operate and provide their renewable energy to our state.

I welcome your questions and would be pleased to provide additional information for the work session.

Respectfully submitted,

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