



STATE OF MAINE
PUBLIC UTILITIES COMMISSION

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Testimony of the Maine Public Utilities Commission

Neither For Nor Against

LD 1860, An 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 (Committee), my name is Deirdre Schneider, testifying neither for nor against LD 1860, An Act to Allow Certain Distributed Energy Resources to Participate in the State's Net Energy Billing Program on behalf of the Public Utilities Commission (Commission).

Background

During the 130th Legislature, Public Law 2021, chapter 390 (Act) was enacted creating requirements a two- to five-megawatt distributed generation resource project must meet in order to qualify for net energy billing under both the kilowatt-hour program and the commercial and institutional program.¹ The Act also included a good cause exemption provision that allows an entity that does not meet one or more of the requirements to petition the Commission for a good cause exemption due to external delays outside of the entity's control, which the Commission may grant if it finds that, without the external delays, the entity could reasonably have been expected to meet the requirements.

Subsequent to this legislation, Public Law 2023, chapter 411 was enacted establishing the requirement that projects under 35-A M.R.S. § 3209-A that are at least one megawatt and not more than two megawatts are required to reach commercial operation by December 31, 2024, which is consistent with the commercial operation requirements established for two- to five-megawatt projects under the Act. Projects in this size range that fail to meet the operational deadline are also permitted to petition the Commission for a good cause exemption.

LD 1860

LD 1860 would allow two solar projects, Ameresco Solar's Ellsworth project and Nordic Sun Energy's Presque Isle project, that did not meet eligibility requirements established in law to participate in net energy billing.

¹ Now codified at 35-A M.R.S. § 3209-A(7) and 35-A M.R.S. § 3209-B(7)

The Commission has received 66 petitions for a good cause exemption.² Ameresco Solar's Ellsworth project sought a good cause exemption from the Commission, which was denied. This decision has been appealed to the Law Court. It does not appear that the Presque Isle project has petitioned the Commission for a good cause exemption, though it could still do so.

The Commission is concerned that if this legislation is enacted it may undermine the process at the Commission and could set a precedent that will result in additional appeals, both to the Commission and the Legislature. In reviewing good cause exemption requests, the Commission has strived to maintain a level of consistency among all cases. This bill upends that consistency and raises questions of whether or how the Commission should apply a different analysis if this bill moves forward. Other projects that share similar fact patterns to the two projects in this legislation would likely seek to be permitted to participate in net energy billing and it is unclear to the Commission if we would need to apply a standard to good cause cases based on this legislation. Not doing so could result in similarly situated developers being treated differently based solely on the fact that some received individualized legislative approval while others did not.

If the Committee moves forward with LD 1860, the Commission requests that clarity be provided on whether there are additional requirements or considerations related to the good cause exemption process that we should be applying prospectively and/or retroactively. A more permissive standard would allow more projects to qualify for net energy billing, which would increase the overall cost of the program.

Lastly, it is important to note that these projects may also have another avenue to pursue, which is the contaminated lands procurement pursuant to 35-A M.R.S. § 3210-J. In order to procure the amount of energy and renewable energy credits required by law, the Commission likely will need to engage in multiple rounds of competitive solicitations. While the law establishes a preference for projects located on agricultural land contaminated by PFAS and a secondary preference for projects that minimize the use of non-contaminated farmland and forested land, any project may participate in future solicitations whether they meet the criteria for a preference or not.

I would be happy to answer any questions or provide additional information for the work session.

² 39 of the 66 cases have been decided by a Commission order. The Commission has granted 19 exemptions and denied 20 petitions. Of the 27 remaining petitions some are still under review (6), while others have been dismissed (3), or the petitioner has withdrawn their request (18). The Commission is still receiving petitions for good cause exemptions.