



State of Maine
Office of the Public Advocate
112 State House Station, Augusta, Maine 04333-0112
(207) 624-3687 (voice) 711 (TTY)
www.maine.gov/meopa

Heather Sanborn
PUBLIC ADVOCATE

**Testimony Neither for Nor Against
LD 1250, “An Act to Provide That Portfolio Requirements for Renewable Electricity
Resources Apply Only to Actual Retail Sales”**

April 9, 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 neither for nor against LD 1250, “An Act to Provide That Portfolio Requirements for Renewable Electricity Resources Apply Only to Actual Retail Sales.”

We want to provide important context for the committee on this bill. This bill invites the committee to weigh in on an important question: how should we treat electricity that is consumed by Mainers, but never billed for, when we’re accounting for compliance with the renewable portfolio standard (RPS)? This question arises in two important contexts today: 1) behind-the-meter generation that is co-located with the consumer’s load (e.g. roof-top solar and industrial behind-the-meter generation) and 2) front-of-the-meter NEB projects in the kWh credit program.¹ The committee’s consideration of the issue comes at a critical time.

The PUC has taken the position, for more than 15 years, that “behind-the-meter generators, as a condition of RPS certification, must hold back an amount of [renewable energy credits] RECs from the market that would be required if a CEP was serving the load behind-the-meter.”² In other words, under longstanding PUC precedent, the generator has to **hold back** a portion of its RECs to account for its own behind-the-meter energy usage and can sell the rest.

More recently, the PUC has applied this same holdback requirement to front-of-the-meter NEB projects in the kWh credit program.³ Since the energy used by Maine consumers who have bought a solar subscription is not billed for by the standard offer supplier or a CEP, this energy is never the subject of a retail sale that is covered by Maine’s RPS. But, the PUC has applied a holdback requirement if the solar farm wants to sell its RECs. The PUC explained, “in ordering [a community solar farm] to account for generation associated with kWh credits as a condition of RPS certification, the Commission is ... exercising its authority to determine the portion of the

¹ Under the PUC’s Chapter 311 rules, an LSE’s RPS compliance obligations are based on billed sales, rather than metered sales. As such, the substantial electricity load served by the kWh program is not included within the LSE’s RPS requirements.

² *Nexamp, Inc. Request for Approval of Certification of RPS Eligibility*, Docket No. 2024-00251, Order at 3 (Feb. 14, 2025) (*Nexamp*), citing *Lincoln Paper and Tissue, LLC, Request for Certification of RPS Eligibility*, Docket No. 2008-00173, Order Granting New Renewable Resource Certification at 7-8 (Jan. 27, 2009) (*Lincoln*).

³ See, e.g., *Brookfield Renewable Energy Marketing Request for Approval of Certification for RPS Eligibility (Dolby)*, Docket No. 2020-00207, Order at 8-9 (Dec. 8, 2023) (*Brookfield*), and *Nexamp* at 6.

Facility's generation that is certified as eligible to satisfy Maine's RPS."⁴ Last month, one of these NEB projects filed an appeal to the Maine Supreme Judicial Court arguing that the PUC does not have the authority to impose a holdback.⁵

This holdback requirement benefits customers who believe they are supporting renewable energy by signing up for a community solar subscription. Without a holdback requirement, the electricity used by community solar farm customers is essentially exempt from Maine's renewable energy requirements, making it effectively "dirtier" than the electricity that customer would have used if they had not signed up for solar. The holdback requirement ensures that the power delivered to the customer at least meets the renewable energy requirements of the state.⁶

The scale of the problem as it relates to the NEB kWh program is significant. We estimate that about 100,000 Maine households are signed up for community solar (about 14% of residential ratepayers). Eliminating the PUC's holdback requirement for these projects has the real potential to undermine the goal of the RPS by making a significant portion of our residential load exempt from compliance.

In considering the bill before you today, you should take this opportunity to send a clear message to the PUC and the Law Court about whether a holdback requirement is appropriate and in what circumstances. Is there a difference between behind-the-meter generation that is co-located with the load it serves and in-front-of-the-meter community solar projects in the kWh program? Is it important that Maine community solar farm customers' energy usage be accounted for as Maine complies with our own renewable energy portfolio requirements?

The OPA stands ready to work with the committee, if it is interested, to help redraft the bill to answer these questions clearly.

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 1250 and will be available if requested for the work session to assist the Committee in its consideration of this bill.

Respectfully submitted,

Heather Sanborn
Public Advocate

⁴ *Nexamp* at 4.

⁵ *Nexamp*, Notice of Appeal to the Law Court (Mar. 7. 2025).

⁶ The committee may want to consider requiring all kWh credit generators who wish to sell their RECs anywhere in New England to obtain certification from the Maine PUC to make them subject to the holdback requirement. Otherwise, generators may simply choose not to be certified in Maine and instead sell all of their RECs in Massachusetts, evading the holdback requirement.