

CHAPTER 228
SB 91 - FINAL VERSION

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2021 SESSION

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SENATE BILL **91**

AN ACT adopting omnibus legislation on renewable energy and utilities.

SPONSORS: Sen. Watters, Dist 4

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill adopts legislation relative to:

I. The installation, interconnection, and use of energy storage systems by customers of utilities.

II. Hydroelectric generators that share equipment for purposes of interconnection to the electric grid, and relative to the public utilities commission developing alternative tariffs for net energy metering.

III. Group host credits for net energy metering.

IV. Establishing a commission to study limited electrical energy producers.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~in brackets and struck through.~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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22 II. "Bring your own device" means a program for encouraging non-utility owned, and
23 especially retail-customer owned, behind-the-meter energy storage to provide value to the electricity
24 system, particularly in terms of peak reduction and avoided transmission and distribution costs.
25 Such a program shall provide just and reasonable compensation, as determined by the commission,
26 including actual avoided transmission and distribution costs, to a participating behind-the-meter
27 energy storage system for the value it provides to the electricity system.

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1 III. "Energy storage" means batteries, flywheels, compressed air energy systems, sensible
2 heat storage or any other technology, system, or device capable of taking electricity and storing it as
3 some form of energy the technology, system, or device can either convert back into electricity or use
4 to displace an electrical load at a later time. Such term shall include standalone technologies,
5 systems, and devices, as well as those co-located with or incorporated into a renewable energy
6 source.

7 IV. "Front-of-meter storage" means any energy storage that is not behind-the-meter storage
8 and may include energy storage constructed, owned, and/or operated by utilities subject to the same
9 use restrictions in RSA 374-G:4, I.

10 V. "ISO-New England" means the Independent System Operator New England or any
11 successor entity.

12 VI. "Local network service" means the term as defined in ISO-New England's transmission,
13 markets, and services tariff, section II.

14 VII. "Non-utility" means any entity that is not a utility that develops, builds, owns, operates,
15 or assists in the operation of one or more energy storage projects, including retail customers that buy
16 behind-the-meter storage installed on their property.

17 VIII. "Regional network service" means the term as defined in ISO-New England's
18 transmission, markets, and services tariff, section II.

19 IX. "Renewable energy source" means a Class I, Class II, or Class IV renewable energy
20 source as defined in RSA 362-F:4.

21 X. "Utility" and "utilities" mean public utilities as defined in RSA 362:2.

22 XI. "Wholesale electricity markets" means any energy, capacity, or ancillary service market
23 that ISO-New England operates or may operate pursuant to RSA 362-A:2-a.

24 374-H:2 Customer Energy Storage Systems.

25 I. The commission shall adopt rules clarifying policy for the installation, interconnection,
26 and use of energy storage systems by customers of utilities, and shall incorporate the following
27 principles into the rules:

28 (a) It is in the public interest to limit barriers to the installation, interconnection, and
29 use of customer-sited, behind-the-meter energy storage systems in New Hampshire.

30 (b) New Hampshire's consumers of electricity have a right to install, interconnect, and
31 use energy storage systems on their property, subject to appropriate size and safety requirements
32 established by the commission, without the burden of unnecessary restrictions or regulations and
33 without unduly discriminatory rates or fees, provided that such storage systems conform to local
34 zoning ordinances and building codes.

35 (c) Utility approval processes and any required interconnection reviews of energy
36 storage systems shall be simple, streamlined, and just and reasonable for all parties.

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1 (d) The commission may approve mechanisms for a utility to compensate a non-utility
2 for just and reasonable costs, as determined by the commission, of any transmission or distribution
3 charges actually avoided because of a non-utility energy storage project, to the extent practicable,
4 based on determinable cost components.

5 (e) For behind-the-meter storage, the rules or orders shall allow for a bring-your-own-
6 device peak reduction program. The commission may approve mechanisms for a utility to
7 compensate such projects for the value they actually provide including any transmission or
8 distribution costs actually avoided because of the non-utility energy storage project, to the extent
9 practicable based on determinable cost components.

10 II. Nothing in this section alters or supersedes either:

11 (a) The principles of net energy metering under RSA 362-A:9; or

12 (b) Any existing electrical permit requirements or any licensing or certification
13 requirements for installers, manufacturers, or equipment.

14 374-H:3 Commission Investigation of Energy Storage.

15 I. The commission shall investigate ways to enable energy storage projects to receive
16 compensation for avoided transmission and distribution costs, including avoided regional and local
17 network service charges, while also participating in wholesale energy markets. The commission
18 shall investigate how this might be done for both utility-owned and non-utility-owned energy storage
19 projects, as well as for both behind-the-meter storage and front-of-the-meter storage.

20 II. The commission's investigative proceeding shall specifically consider the following:

21 (a) How public policy can best establish accurate and efficient price signals for energy
22 storage projects that avoid actual transmission and distribution costs or reduce wholesale electricity
23 market prices.

24 (b) How to compensate energy storage projects that participate in wholesale electricity
25 markets for actual avoided transmission and distribution costs in a manner that provides net
26 savings to consumers.

27 (c) How best to encourage both utility and non-utility investments in energy storage
28 projects.

29 (d) The costs and benefits of a potential bring your own device program; how such a
30 program might be implemented; any statutory or regulatory changes that might be needed to create,
31 facilitate, and implement such a program; and whether such a program should include all
32 distributed energy resources or be limited to distributed energy storage projects.

33 (e) Any statutory changes the general court should implement, including but not limited
34 to changes to or exceptions from RSA 374-F or RSA 374-G, to enable energy storage projects to
35 receive appropriate compensation for actual avoided transmission and distribution costs while also
36 participating in wholesale energy markets.

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(f) Any other topic the commission reasonably believes it should consider in order to diligently conduct the proceeding.

III. The commission shall report its findings and recommendations to the standing committees of the house of representatives and senate with jurisdiction over energy and utility matters no later than 2 years after initiating the proceeding. The report shall identify ways any recommended statutory changes can minimize any potential conflict with the restructuring policy principles of RSA 374-F.

2 Distributed Energy Resources; Definitions; Exclusions. Amend RSA 374-G:2 to read as follows:

374-G:2 Definitions; Exclusions.

I. The following definitions shall apply in this chapter except as otherwise provided:

(a) "Commission" means the public utilities commission.

(b) "Distributed energy resources" means **energy storage**, electric generation equipment[,] including clean and renewable generation, [~~energy storage,~~] energy efficiency, demand response, load reduction or control programs, [~~and~~] **or** technologies or devices located on or interconnected to the local electric distribution system for purposes including but not limited to reducing line losses, supporting voltage regulation, or peak load shaving, as part of a strategy for minimizing transmission and distribution costs as provided in RSA 374-F:3, III.

(c) "Electric generation equipment" means devices that produce electric power from sources of primary energy.

(d) "Primary energy" means an energy form found in nature that has not been subject to any human engineered conversion process including wind energy, solar energy, biomass, biofuels, geothermal energy, oil, natural gas, nuclear, hydro, and coal.

II.(a) "Distributed energy resources" in this chapter shall exclude electric generation equipment interconnected with the local electric distribution system at a single point or through a customer's own electrical wiring that is in excess of 5 megawatts.

(b) Any "electric generation equipment" that qualifies as energy storage as defined in RSA 374-H:1, III shall not be subject to any of the requirements of RSA 374-G:3.

3 Electric Generation Equipment Funded by Public Utility; Distributed Energy Resources. Amend RSA 374-G:3, I to read as follows:

I. The energy produced by electric generation equipment owned by the public utility shall be used **to benefit low-income customers, with such benefit as determined by the commission**, as an offset to distribution system losses or the public utility company's own use, **or any other use as approved by the commission**;

4 Electric Utility Investment in Distributed Energy Resources. Amend RSA 374-G:4, II to read as follows:

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II. Distributed electric generation owned by or receiving investments from an electric utility under this section shall be limited to a cumulative maximum in megawatts of 6 percent of the utility's total distribution peak load in megawatts. ***This limitation shall not apply to front-of-meter energy storage, the energy storage pilot approved by commission order number 26,209, or demand response.***

5 Effective Date. Part I of this act shall take effect 60 days after its passage.

PART II

Relative to hydroelectric generators that share equipment for purposes of interconnection to the electric grid, and requiring the public utilities commission to ensure costs are not shifted in developing alternative tariffs for net energy metering.

1 New Paragraph; Limited Electrical Energy Producers Act; Net Energy Metering. Amend RSA 362-A:9 by inserting after paragraph XIX the following new paragraph:

XX. A hydroelectric generator with a total peak generating capacity that is at or below the capacity eligibility requirements set forth in RSA 362-A:1-a, II-b and that first became operational before July 1, 2021 and that shares equipment or facilities with other generators or electric utility customers for interconnection to the electric grid, shall be eligible to participate in net energy metering as a customer-generator even if the aggregate capacity of the generators sharing equipment or facilities for interconnection to the electric grid exceeds the capacity eligibility requirements set forth in RSA 362-A:1-a, II-b. Such a hydroelectric generator shall be eligible to participate in net energy metering as a customer-generator based on its individual total peak generating capacity.

2 Limited Electrical Energy Producers Act; Net Energy Metering; Alternative Tariffs. Amend RSA 362-A:9, XVI to read as follows:

XVI. ~~[No later than 3 weeks after the effective date of this paragraph,]~~

(a) The commission, ***through an adjudicative proceeding***, shall ~~[initiate a proceeding]~~ ***continue*** to develop ***and periodically review*** new alternative net metering tariffs, which may include other regulatory mechanisms and tariffs for customer-generators, and determine whether and to what extent such tariffs should be limited in their availability within each electric distribution utility's service territory. In developing such alternative tariffs and any limitations in their availability, the commission shall consider: ***balancing the interests of customer-generators with those of electric utility ratepayers by maximizing any net benefits while minimizing any negative cost shifts from customer-generators to other customers and from other customers to customer-generators***; the costs and benefits of customer-generator facilities; an avoidance of unjust and unreasonable cost shifting; rate effects on all customers; alternative rate structures, including time-based tariffs pursuant to paragraph VIII; whether there should be a limitation on the amount of generating capacity eligible for such tariffs; the size of facilities eligible to receive net metering tariffs; timely recovery of lost revenue by the utility using an automatic rate

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adjustment mechanism; and electric distribution utilities' administrative processes required to implement such tariffs and related regulatory mechanisms. The commission may waive or modify specific size limits and terms and conditions of service for net metering specified in paragraphs I, III, IV, V, and VI that it finds to be just and reasonable in the adoption of alternative tariffs for customer-generators. The commission may approve time and/or size limited pilots of alternative tariffs.

(b) Until such time as the commission adopts alternative net metering tariffs that expressly apply to customer-generators with a total peak generating capacity of greater than one megawatt pursuant to the criteria set forth in this paragraph, the provisions of commission order no. 26,029 issued on June 23, 2017 and subsequent orders applicable to large customer-generators shall be applicable to customer-generators of greater than one megawatt otherwise authorized by statute.

(c) Customer-generators of greater than one megawatt total peak generating capacity that are compensated for exports to the grid pursuant to subparagraph (b) prior to commission approval of net metering tariffs that expressly apply to such customer-generators shall have the voluntary option to switch to such expressly applicable new tariff under its terms but shall not be permitted to return to a prior tariff or net metering terms once they have switched.

3 New Paragraph; Limited Electrical Energy Producers Act; Net Energy Metering. Amend RSA 362-A:9 by inserting after paragraph XX the following new paragraph:

XXI.(a) The commission shall consider the question of whether or not exports to the grid by customer-generators taking default service should be accounted for as reduction to what would otherwise be the wholesale load obligation of the load serving entity providing default service absent such exports to the grid. The commission shall use its best efforts to resolve such question through an order in an adjudicated proceeding, which may be DE 16-576, issued no later than June 15, 2022.

(b) No generator of greater than one megawatt total peak generating capacity that first becomes operational after July 1, 2021 that elects to participate in net metering as otherwise authorized by statute shall be registered as a generator asset with ISO New England before June 30, 2022.

(c) A generator of greater than one megawatt total peak generating capacity that first became operational before July 1, 2021 that elects to participate in net metering as otherwise authorized by statute and that is registered with ISO New England as a generator asset may, at its discretion, retire from such participation in ISO New England wholesale markets.

4 Effective Date. Part II of this act shall take effect upon its passage.

PART III

Relative to group host credits for net energy metering.

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1 1 Net Metering; Group Host; Low -Moderate Income Community Solar Projects. Amend RSA
2 362-A:9, XIV(c) to read as follows:

3 (c)(1) Notwithstanding paragraph V, a group host shall be paid for its surplus
4 generation at the end of each billing cycle at rates consistent with the credit the group host receives
5 relative to its own net metering under either subparagraph IV(a) or (b) or alternative tariffs that
6 may be applicable pursuant to paragraph XVI. Alternatively, a group host may elect to receive
7 credits on the customer electric bill for each member and the host, with the utility being allowed the
8 most cost-effective method of doing so according to an amount or percentage specified for each
9 member on PUC form 909.09 (Application to Register or Re-register as a Host), along with a 3 cent
10 per kwh addition from July 1, 2019 through July 1, 2021 and a 2.5 cent per kwh addition thereafter
11 for low-moderate income community solar projects, as defined in RSA 362-F:2, X-a. ***The cent per***
12 ***kwh addition to the credit provided to any particular low-moderate income community***
13 ***solar project shall be in the amount in effect on the date that the commission issues a***
14 ***group host registration number for that project. The amount of the cent per kwh addition***
15 ***shall be grandfathered in accordance with the grandfathering provisions of the net***
16 ***metering tariff for customer-generators applicable to the project as in effect on the date the***
17 ***commission issues the project a group host registration number.***

18 (2) On or before July 1, 2022, the commission shall report on the costs and benefits
19 of such an addition and the development of the market for low-moderate income community solar
20 projects, and provide a recommendation on whether the addition shall be increased or decreased.
21 The commission shall report on the costs and benefits of low-moderate income community solar
22 projects, as defined in RSA 362-F:2, X-a on or before June 1, 2020. The commission shall authorize
23 at least 2 new low-moderate income community solar projects, as defined in RSA 362-F:2, X-a, each
24 year in each utility's service territory beginning January 1, 2020. On an annual basis, for all group
25 host systems except for residential systems with an interconnected capacity under 15 kilowatts, the
26 electric distribution utility shall calculate a payment adjustment if the host's surplus generation for
27 which it was paid is greater than the group's total electricity usage during the same time period.
28 The adjustment shall be such that the resulting compensation to the host for the amount that
29 exceeded the group's total usage shall be at the utility's avoided cost or its default service rate in
30 accordance with subparagraph V(b) or paragraph VI or alternative tariffs that may be applicable
31 pursuant to paragraph XVI. The utility shall pay or bill the host accordingly.

32 2 Effective Date. Part III of this act shall take effect 60 days after its passage.

PART IV

34 Establishing a commission to study limited electrical energy producers.

35 1 New Section; Public Utilities; Commission to Study Limited Electrical Energy Producers.
36 Amend RSA 362-A by inserting after section 3 the following new section:

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1 362-A:3-a Commission to Study Limited Electrical Energy Producers. There is established a
2 commission to study intrastate wholesale electricity sales.

3 I. The commission shall consist of the following members:

4 (a) Three members of the house science technology and energy committee, with at least
5 one member of the minority party, appointed by the speaker of the house of representatives.

6 (b) Two members of the senate energy and natural resources committee, appointed by
7 the president of the senate.

8 (c) One member who is either as initially appointed from the public utilities commission
9 by the chairperson of the public utilities commission or is appointed by the commissioner of the
10 newly established department of energy if it becomes law.

11 II. Legislative members of the commission shall receive mileage at the legislative rate when
12 attending to the duties of the commission.

13 III. The commission may solicit input from any person or entity the commission deems
14 relevant to its study, including transmission and distribution utilities, and ISO-New England.

15 IV. The commission shall examine the feasibility of legislation amending RSA 362-A (limited
16 electrical energy producers or LEEP) to facilitate intrastate wholesale electricity sales and
17 determine if such sales provide a way to fill the gap between one- and 5-megawatt electricity sales
18 outside of ISO-New England markets. The commission shall seek to answer several major questions:

19 (a) Do LEEP sales avoid jurisdictional conflicts with FERC regulated transmission
20 transactions?

21 (b) Does crediting LEEP generators with avoided transmission costs shift such costs to
22 either a transmission utility, which could then increase its rates to recover said costs, or to
23 distribution ratepayers?

24 (c) Do the transmission and distribution grids overlap in ways that make calculating
25 avoided transmission charges possible?

26 (d) Do transmission rates increase to cover credits in LEEP transactions?

27 (e) What kinds of transactions will legislation enable that cannot be achieved today?

28 (f) What other issues could affect this legislation?

29 (g) Are there relevant similarities or differences with respect to how LEEP generators
30 are or could be treated with respect to avoided transmission costs and how customer-generators
31 under net energy metering are or could be treated with respect to avoided transmission costs?

32 V. The members of the commission shall elect a chairperson from among the members. The
33 first meeting of the commission shall be called by the first-named house member. The first meeting
34 of the commission shall be held within 30 days of the effective date of this section. Three members of
35 the commission shall constitute a quorum.

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1 VI The commission shall make a report with its findings and any recommendations for
2 proposed legislation on or before November 1, 2021 to the speaker of the house of representatives,
3 the president of the senate, the house clerk, the senate clerk, the governor, and the state library.

4 2 Prospective Repeal. RSA 362-A:3-a, relative to the commission to study limited electrical
5 energy producers, is repealed.

6 3 Effective Date.

7 I. Section 2 of Part IV of this act shall take effect November 1, 2021.

 II. The remainder of this Part shall take effect upon its passage.

Approved: August 26, 2021

Effective Date:

Part I effective October 25, 2021

Part II effective August 26, 2021

Part III effective October 25, 2021

Part IV: I. Section 2 effective November 1, 2021.

II. Remainder effective August 26, 2021.