

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. IR 20-166

ELECTRIC DISTRIBUTION UTILITIES

**Investigation into Compensation of Energy Storage Projects for
Avoided Transmission and Distribution Costs**

**SECOND JOINT REPLY COMMENTS OF REPRESENTATIVE LEE W. OXENHAM
AND IAN R. A. OXENHAM, ESQ.**

We appreciate the opportunity to submit additional comments and discuss the effects that SB 91 has on this investigation. These comments will focus solely on the substantive effects of the new statutory mandates and authority that SB 91 creates,¹ rather than issues pertaining to the division of authority between the Public Utilities Commission (“Commission”) and the Department of Energy (“Department”).² We likewise do not address potential changes to how

¹ The General Court passed SB 91 on June 24, 2021, but the Governor has yet to sign it. *Docket of SB91*, GEN. CT. N.H., http://gencourt.state.nh.us/bill_status/bill_docket.aspx?lsr=0945&sy=2021&txtsessionyear=2021&txtbillnumber=sb91&sortoption=&q=1 (last visited July 5, 2021).

² The fact that SB 91 may yet undergo an enrolled bill amendment in light of HB 2’s enactment creates uncertainty as to whether the Department or the Commission will ultimately be responsible for concluding this investigation. Section 287 of HB 2 amended RSA 374-H:1, I to read “‘Department’ means the department of energy” instead of the prior “‘Commission’ means the public utilities commission.” H.B. 2, 167th Gen. Court, 2021 Sess., 2021 N.H. Laws, ch. 91, § 287. Section 288 of HB 2 then replaced the word “commission” with “department” throughout all of RSA 374-H, thereby transferring responsibility for the energy storage investigation and report to the Department. *Id.* § 288. However, Part 1 of SB 91 would repeal and re-enact RSA 374-H in its entirety with language that provides that the Commission, not the Department, is to conduct the investigation and provide a report to the relevant legislative committees. S.B. 91, 167th Gen. Court, 2021 Sess., pt. 1, § 1. The relevant language can be found in the new RSA 374-H:3 that SB 91 would enact, which is effectively a re-enactment of the prior RSA 374-H:2 with only minor changes. *Id.* Thus, absent an enrolled bill amendment, SB 91 would return responsibility for this investigation to the Commission.

ISO New England reconstitutes load for the purpose of assessing Regional Network Service charges, as our previous comments addressed this issue.³

SB 91 largely obviates one of the original purposes of this investigation: advising the General Court on potential statutory changes that would enable energy storage to be properly compensated for the value it provides to the grid. In our view, SB 91 enacts the statutory changes necessary to accomplish this goal. Specifically, it mandates a bring-your-own-device (“BYOD”) program for energy storage,⁴ explicitly authorizes compensation to non-utility-owned energy storage projects for avoided transmission and distribution costs,⁵ exempts energy storage and storage-plus-generation systems from RSA 374-G:3,⁶ and exempts front-of-the-meter energy storage from RSA 374-G:4, II.⁷ Though some additional, minor statutory changes may be desirable,⁸ we believe the main task will become regulatory implementation once SB 91 is enacted.

³ See Joint Reply Comments of Representative Lee W. Oxenham & Ian. R. A. Oxenham, Esq., at 4-8 (Mar. 7, 2021) [hereinafter “Oxenham First Reply Comments”].

⁴ SB 91, pt. 1, § 1, RSA 374-H:2, I(e).

⁵ *Id.*, RSA 374-H:2, I(d).

⁶ *Id.* § 2, RSA 374-G:2, II(b).

⁷ *Id.* § 4, RSA 374-G:4, II.

⁸ For instance, in our initial comments we suggested recommending that the General Court repeal “paragraphs I, II, and III of RSA 374-G:3” entirely. Joint Comments of Representative Lee W. Oxenham & Ian. R. A. Oxenham, Esq., at 39 (Jan. 10, 2021) [hereinafter “Oxenham Initial Comments”]. This change would exempt distributed generation as well as energy storage from what we believe are RSA 374-G:3’s counterproductive restrictions. We also suggested that “an ideal BYOD program or set of programs should be open to any [distributed energy resource] technically capable of supplying verifiable peak load reductions and/or dispatchable injections of energy into the grid,” not just energy storage. *Id.* at 40. Yet SB 91 only expressly mandates a BYOD program for energy storage and only exempts energy storage and generation-plus-storage systems from RSA 374-G:3. SB 91, pt. 1, § 1, RSA 374-H:2, I(e); *id.* § 2, RSA 374-G:2, II(b). A more expansive BYOD statutory mandate and broader exemptions from RSA 374-G:3 would have enabled other distributed energy resources to provide greater value to the grid as well. Nonetheless, SB 91 enacts the key statutory changes needed to unlock energy storage’s full potential.

Thus, assuming that SB 91 becomes law, the main value of any further investigation will lie in providing information that assists the bill's implementation. The comments, perspectives, and proposals that have been submitted in this investigation directly bear on how the new provisions that SB 91 adds to RSA 374-H should be implemented. This information should therefore be used as a starting point in whatever proceeding(s) are initiated to implement these provisions. Likewise, as SB 91 still mandates the completion of this investigation and a report to the General Court,⁹ the Commission and/or Department should strive to minimize any duplication of effort between that investigatory process and any proceeding(s) to promulgate rules or orders.

We also believe that SB 91 removes any doubt as to the Commission's authority to implement the main proposals we put forward in our prior comments. Specifically, SB 91 expressly authorizes the Commission to develop mechanisms for a utility to compensate a non-utility-owned storage project for avoided transmission and distribution costs.¹⁰ In combination with its pre-existing authority,¹¹ this clearly gives the Commission the power to require utilities to contract for third-party-owned, non-wires-solution ("NWS") storage projects when they can meet distribution system needs at a lower cost than traditional utility investments.¹² We

⁹ SB 91, pt. 1, § 1, RSA 374-H:3, I, III.

¹⁰ *See id.*, RSA 374-H:2, I(e) ("The commission may approve mechanisms for a utility to compensate a non-utility for just and reasonable costs, as determined by the commission, of any transmission or distribution charges actually avoided because of a non-utility energy storage project . . .").

¹¹ *See Oxenham Initial Comments* at 25-30 (discussing how the Commission can use its pre-existing authority to implement the basic elements of our proposal).

¹² *See id.* at 19-24 (proposing a system in which both utilities and non-utilities could own NWS storage projects and monetize the value of avoided transmission and distribution costs); *Oxenham First Reply Comments* at 4-8, 13-18 (elaborating on and/or suggesting modifications to various elements of our original proposal).

therefore recommend that the Commission use this new authority to the fullest extent possible and put our proposals into practice as it implements SB 91.

In summary, SB 91's enactment will change the nature of this investigation from a process that primarily informs the development of potential new legislation to a process that primarily assists the implementation of existing legislation. Granted, potentially identifying further ways to refine RSA 374-H and other applicable statutes will also remain a proper object of this investigation and the subsequent report to the General Court. Yet, by having enacted most, if not all, of the necessary statutory changes, SB 91 will make determining how to implement the mechanisms it mandates or authorizes the most important purpose of this process. We therefore recommend that the Commission use the proposals that were made in this proceeding as a basis for developing the rules and/or orders that will expeditiously implement SB 91.