



**COMMUNITY  
POWER COALITION**  
OF NEW HAMPSHIRE  
*For communities, by communities.*

**P.O. Box 840**  
**Concord, NH 03302**  
**[www.CommunityPowerNH.gov](http://www.CommunityPowerNH.gov)**

January 4, 2024

Hon. Kevin Avard  
Chair, Energy & Natural Resources  
New Hampshire Senate  
107 North Main St.  
Concord, NH 03301

**RE: SB 388**, *relative to administration of utilities by the department of energy.*

Dear Chairman Avard and members of the Senate Energy & Natural Resources Committee,

The Community Power Coalition of New Hampshire (CPCNH) supports the passage of Senate Bill 388, with the caveat that we advise that Section 4 of the bill, concerning Customer Energy Storage, be either deleted or amended to clarify the role of the NH Department of Energy (DOE) as preparing an initial rule proposal for the Public Utilities Commission (PUC) to consider and adopt.

Before explaining why, I'd like to give you a quick update on the Coalition. As you may recall we are a governmental instrumentality of our Member jurisdictions pursuant to a joint powers agreement under RSA 53-A and RSA 53-E. When I testified before this committee last winter, we were 26 Members strong but not yet operational, planning to launch service in the spring. Today we have 53 Members including 6 cities, 45 towns, and Cheshire and Merrimack counties and have been successfully operating as a power supplier for 14 Member Community Power Aggregations (CPAs). We are preparing to launch another 25 CPAs later this winter and spring. Our municipal members comprise about 30% of the state's population.

In our first 5 months of operation we saved ~75,000 customers ~\$7 million compared with utility rates and accrued another \$5 million in joint financial reserves. We have just announced a rate decrease to 8.1¢/kWh starting in February for our Granite Basic service, lower than any of the utility default service rates through next July. I've attached a handout that overviews these rates as well as our current membership.

We recommend deleting or amending the section on customer energy storage systems for several reasons:

✦ Just this past October RSA 374-H:2, I was amended by SB 166, as recommended by this Committee, to read as follows:

I. The commission shall adopt rules **or approve tariffs** clarifying policy for the installation, interconnection, and use of energy storage systems by customers of utilities, and shall incorporate the following principles into the rules **or approved tariffs**.

SB 388 §4 would overwrite and void this recent change.

- ✦ This is important because the PUC has two pending proposals in adjudicated proceedings to approve interconnection and use of energy storage systems through tariff changes, one in the net metering docket where we have proposed that battery storage be allowed in conjunction with net metering and another where Liberty Utilities has proposed implementation of phase II of their successful battery storage and Time-of-Use (TOU) rate pilot to allow a "BYOD" option where customers can bring their own device for energy storage with TOU rates to help shave peak demand, with or without net metering.
- ✦ Traditionally interconnection issues have been addressed in PUC approved tariffs, often with reference to separate and much more detailed utility interconnection standards, though rules can play a role, as they do with net metering, but the tariffs and rules must mesh together.
- ✦ SB 388 §4 as introduced would be in direct conflict with SB 391 that several of you are also sponsoring. This later bill, which hasn't been heard yet, wisely recognizes that the standards that apply to interconnecting distributed storage and distributed generation need to be part of a unified set of standards overseen by the PUC.

The DOE still has an important role to play and should be involved in proposing rules and rule amendments for the PUC's consideration and providing testimony and advocacy in related adjudicated and rule-making proceedings.

There is a similar issue with net metering rules that I address below in a postscript for your future consideration.

If you have any questions, please don't hesitate to contact me. Thank you.

Yours truly,



Chair, CPCNH, (603) 448-5899, [Clifton.Below@CommunityPowerNH.gov](mailto:Clifton.Below@CommunityPowerNH.gov)

**P.S.** As part of 2021 HB 2, the budget trailer bill that created the NH DOE, responsibility for net metering rules and certain waiver provisions were transferred to the new DOE with this simple language from Section 233 of the bill: "Reference Change; Net Energy Metering; Department of Energy. Amend the following RSA provisions by replacing the term "commission" with "department": 362-A:9, X-XII." So RSA 362-A:9 now reads at these sections:

X. The ~~commission~~ **department** shall adopt rules, pursuant to RSA 541-A, to:

(a) Establish reasonable interconnection requirements for safety, reliability, and power quality as it determines the public interest requires. Such rules shall not exceed applicable test standards of the American National Standards Institute (ANSI) or Underwriters Laboratory (UL); and

(b) Implement the provisions of this section.

XI. The ~~commission~~ **department** may by order, after notice and hearing:

(a) Waive any of the limitations set forth in this chapter for targeted net energy metering arrangements that are part of a utility strategy to minimize distribution or other costs; and

(b) Implement any utility-specific provisions authorized under this section.

XII. Once the ~~commission~~ **department** has established standards for equipment used by eligible customer-generators, electric distribution utilities shall not require any additional standards or testing for transmission equipment as a condition of net energy metering.

To my knowledge DOE has not exercised any authority under these provisions to date. This change did not receive any hearing or attention by the House or Senate policy committees as it was part of a late package from the Governor with hundreds of provisions reviewed only by Finance committees.

While it makes sense that certain rules were moved over to DOE, this probably wasn't one of them. The PUC has extensive responsibility for overseeing and updating the terms and conditions for net metering and does so through adjudicated proceedings and tariff revisions. When net metering tariffs were last updated in 2017 the conforming rule amendments followed later, but by the same agency.

This 2021 change goes beyond disconnecting net metering rules from the adjudicated processes of the PUC that update the tariffs to charge the DOE with operating as a parallel regulatory authority with an obligation to undertake adjudicatory proceedings, with testimony and due process under RSA 541-A, the administrative procedures act, invoked by the reference to "may by order, after notice and hearing" waive provisions of RSA 362-A:9 or implement utility-specific provisions, which the PUC also has authority to do under other provisions of RSA 362-A:9 and other statutes.

I'm not sure anyone has thought through all the implications of having two regulatory agencies with overlapping jurisdictions. For example, what happens if the DOE issues rules or orders that conflict with PUC orders or approved tariffs? Will the NH Supreme Court have to sort it out? Food for thought -- perhaps better to avoid such a possibility in the first place better clarifying roles.