

Community Power Coalition of New Hampshire (CPCNH) Responses

NHPUC Docket: DE 22-060

Consideration of Changes to the Current Net Metering Tariff Structure,
Including Compensation of Customer-Generators

Public Service Company of New Hampshire d/b/a/ Eversource Energy (EE)
Set 1 Data Requests to CPCNH

Date Request Received: 2/6/24
Request No. EE to CPCNH 1.7

Date of Response: 2/20/24, revised 2/22/24
Witness & Respondent: Clifton Below

REQUEST:

1.7. Referring to rebuttal testimony on page 11, please provide the source defining a “within-state wholesale sales” and why New Hampshire net metering specifically is this type of sale.

RESPONSE:

A “within state wholesale” is an “intrastate wholesale sale” of electricity and is a sale for resale by a generator within one state, for transmission and retail sale and consumption exclusively within the same state. This is the inverse of a wholesale sale of electricity in interstate commerce where power is produced in one state and consumed in another. These terms come from the Federal Power Act and the U.S. Supreme Court in interpreting and applying that statute.

The US Supreme Court has equated “within-state wholesale sales” of electricity with “intrastate wholesale sales” and explained that such wholesale sales, along with retail sales, are those sales of electricity over which the states have exclusive jurisdiction in *FERC v. Elec. Power Supply Ass’n (EPSA)*, 577 U.S. 260, 267 (2016) (with emphasis added):

Under the [Federal Power Act] statute, the Commission has authority to regulate “the transmission of electric energy in interstate commerce” and “the sale of electric energy at wholesale in interstate commerce.” 16 U. S. C. §824(b)(1).

. . . the Act also limits FERC’s regulatory reach, and thereby maintains a zone of exclusive state jurisdiction. As pertinent here, §824(b)(1)—the same provision that gives FERC authority over wholesale sales—states that “this subchapter,” including its delegation to FERC, “shall not apply to any other sale of electric energy.”

Accordingly, the Commission may not regulate either **within-state wholesale sales** or, more pertinent here, retail sales of electricity (*i.e.*, sales directly to users). See *New York*, 535 U. S., at 17, 23. State utility commissions continue to oversee those transactions.

“ . . . as earlier described, [FPA] §824(b) limit[s] FERC’s sale jurisdiction to that at wholesale,” **reserving regulatory authority over retail sales (as well as intrastate wholesale sales) to the States.** *New York*, 535 U. S., at 17 (emphasis deleted); see 16 U. S. C. §824(b); *supra*, at 3. **FERC cannot take an action transgressing that limit** no matter its impact on wholesale rates. [p. 17]

The FPA defines the term “sale of electricity at wholesale” as “a sale of electric energy to any person for resale.” 16 U. S. C. §824(d). It defines “electric energy in interstate commerce” as when electric energy is “transmitted from a State and consumed at any point outside thereof”.

“Intrastate” is commonly understood to be antonym for “interstate” with the former meaning existing or occurring within a state, while the latter means existing or occurring between states.

An intrastate wholesale sale of electricity is a sale for resale by a generator within one state in which the generation, transmission, and consumption (retail sale) occurs exclusively within the same state. This is the inverse of a wholesale sale of electricity in interstate commerce.

Exports to the grid by net metered customer-generators, if on default energy service, are being purchased by the utility intrastate for use in offsetting retail customers loads (by reducing the amount of interstate power purchased from the ISO New England market). This reduction in interstate load purchases is currently being recognized through an adjustment within the residual factor used to calculate load settlement as well as the net metering credits given to customers with net meters exports. Net metering is pursuant to NH state statute first enacted in 1998 before federal law first recognized net metering as state regulatory policy that federal policy encourages states to adopt.¹ The rate at which net metered exports to the grid is given monetary credit (the “sale” as explained in D.R. response 1.6) is determined by the competitive supplier or community power aggregation pursuant to RSA 362-A:9, II when the customer-generator is served by such, and by the rest of RSA 362-A:9 and the NH Public Utilities Commission when the net metered customer-generator is served by utility default energy service.

For additional discussion please see the “Reply Brief of the Community Power Coalition of New Hampshire” dated July 10, 2023, in DE 23-026 at pages 3-7.

¹ Energy Policy Act of 2005, amendments to the Public Utilities Regulatory Policy Act, 16 U.S.C. § 2621 (d)(11).