

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 1.9

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

REQUEST:

1.9. Referring to Page 12, lines 3-4, “the Commission has a responsibility to approve only those tariffs and terms and conditions for net metering that are consistent with both state and federal law.” In *Hughes* the Court found the Maryland program to violate federal jurisdiction “because it disregards an interstate wholesale rate required by FERC” *Hughes v. Talen Energy Mkt’g*, 578 U.S. 150, 166 (2016).

What interstate wholesale rate is being disregarded through the execution of the New Hampshire net metering program, specifically by Eversource applying ISO-NE revenue to the Stranded Cost Recovery Charge to offset the cost of net metering credits?

RESPONSE:

The ISO New England managed interstate (federal) wholesale energy market rates (whether in the day-ahead or real-time energy markets, or as internal bilateral transactions (IBTs) and the Forward Capacity Market are the interstate wholesale rates that are being disregarded or affected by the compensation being paid to customer-generators for their exports to the distribution grid at the full default service rate, which is typically more than the interstate wholesale rates in both of these markets being paid through those markets for the same generation output by the same generator.

To draw from the syllabus in the Court’s slip opinion in *Hughes v. Talen Energy Mkt’g*, the Court explains how compensation over and above that which is set in federal markets by a state, intrudes and is thus pre-empted in an area of exclusive jurisdiction by FERC:

Held: Maryland’s program is preempted because it disregards the interstate wholesale rate FERC requires. A state law is preempted where “Congress has legislated comprehensively to occupy an entire field of regulation,” *Northwest Central Pipeline Corp. v. State Corporation Comm’n of Kan.*, 489 U. S. 493, 509, as well as ““where, under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” ” *Crosby v. National Foreign Trade Council*, 530 U. S. 363, 373. Exercising its exclusive authority over interstate wholesale sales, see 16 U. S. C. §824(b)(1), FERC has approved PJM’s capacity auction as the sole ratesetting mechanism for capacity sales

to PJM, and has deemed the clearing price *per se* just and reasonable. However, Maryland—through the contract for differences—guarantees CPV a rate distinct from the clearing price for its interstate capacity sales to PJM. By adjusting an interstate wholesale rate, Maryland’s program contravenes the FPA’s division of authority between state and federal regulators. That Maryland was attempting to encourage construction of new in-state generation does not save its program. States may regulate within their assigned domain even when their laws incidentally affect areas within FERC’s domain. But they may not seek to achieve as ends, however legitimate, through regulatory means that intrude on FERC’s authority over interstate wholesale rates, as Maryland has done here.

... Maryland’s program is rejected only because it disregards an interstate wholesale rate required by FERC.”

Although the Maryland law that was struck down is different from the additional compensation provided through a net metering export rate, the fact is that Eversource acknowledges that the credit paid to customer-generators includes compensation for their capacity value (or avoided capacity costs if a load reducer). In the Joint Testimony of Eversource, Liberty and Unitil dated August 11, 2023, Eversource testifies that “All customer-generators also receive credit for excess generation at the default energy service rate, which reflects the wholesale cost of generation capacity and other costs incorporated into the default energy service rate.” (At p. 14, lines 1-4.) In the Joint Utilities’ Rebuttal Testimony dated 1/30/24, Eversource testified “that the default service supplier bid price includes costs for capacity, so **customers are already receiving capacity credit through the energy supply portion of the current net metering tariff.**” (Emphasis added, at p. 23, lines 1-3.)

The capacity credit embedded in the retail default service rate is in addition to, or in effect, disregards the FERC approved market rates that are also being paid for the generation and capacity of customer-generators that are also participating in the federal ISO-NE market.