

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 1.10

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

REQUEST:

1.10. Referring to rebuttal testimony at the top of Page 13, cites *New England Ratepayers Association*, 168 FERC ¶ 61,169 at P 41 (2020) noting that FERC invalidated SB 365 because it established a “rate for wholesale sales of electric energy in interstate commerce, which intrudes on [FERC’s] exclusive jurisdiction over wholesale sales of electric energy in interstate commerce.”

What state rate for interstate wholesale sales has been established?

RESPONSE:

Eversource’s retail tariff for credits given to net metered generation establishes the retail default energy service rate as part of compensation when a customer-generator is on utility default energy service and selling surplus to the utility while also receiving credit in the ISO-NE interstate wholesale market. Regardless of whether Eversource considers such transaction as a sale or not, it is the compensation for that energy (for kWh exported to the distribution grid) that affects the rate being earned by the same generator in the FERC jurisdictional wholesale market. The state rate for exports to the grid, in effect, supersedes or supplements the rate established by FERC from participation in the ISO New England interstate wholesale market.

In the case cited in this request at §41, FERC described the nub of the substantive matter as follows (with emphasis added):

SB 365 requires utilities to offer to purchase the net output of eligible biomass and waste facilities at a state-established rate. As explained below, this requirement establishes a rate for **wholesale sales** of electric energy in **interstate** commerce,¹¹⁰ which intrudes on the Commission’s exclusive jurisdiction over **wholesale sales** of electric energy **in interstate commerce**.¹¹¹ We therefore conclude that the rate established by SB 365 is preempted by the FPA.

¹¹⁰ Although SB 365 is structured as requiring an “offer to purchase,” the Commission has previously found that mandating what rate a wholesale buyer must pay a wholesale seller constitutes the setting of the rate for a wholesale sale. *California Commission I*, 132 FERC ¶ 61,047 at P 64.

¹¹¹ 16 U.S.C. §§ 824, 824(b)(1), 824d, 824e; *see Hughes*, 136 S. Ct. at 1292, 1298 (finding that the Commission has exclusive jurisdiction over sales of electric energy **in interstate commerce** and over rates for such sales and that the Maryland program at issue intruded on that authority and was therefore preempted); *Oneok*, 135 S. Ct. at 1599-1600 (noting that a state law “*directed at*” the Commission’s control of rates and facilities of natural gas companies would be preempted because such matters are “precisely the things over which [the Commission] has comprehensive authority” under the Natural Gas Act (emphasis in original)); *FERC v. Electric Power Supply Assn.*, 136 S.Ct. 760, 780 (2016) (“The FPA leaves no room either for direct state regulation of the prices of **interstate wholesales** or for regulation that would indirectly achieve the same result.”) (internal quotation marks omitted); *Miss. Power & Light Co. v. Miss. ex rel. Moore*, 487 U.S. 354 (1988); *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986).