

**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

Date of Response: 2/20/24

Request No. EE to CPCNH 1.6

Witness & Respondent: Clifton Below

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**REQUEST:**

**1.6.** FERC disclaimed jurisdiction over net metering because “**no sale** occurs when an individual... installs generation and accounts for its dealings with the utility through the practice of netting.” MidAmerican Energy, 94 FERC ¶ 61,340 at p. 5 (2001).

Referring to rebuttal testimony on Page 11, please provide any and all citations or support for net metering comprising a “sale”.

**RESPONSE:**

**CPCNH objects to this data request as it asks for legal research and conclusions of law, which are not reasonable or appropriate for data requests.**

Notwithstanding our objection, and based on my experience and expertise in electric utility policy and regulation, as I am a not lawyer, I observe multiple ways in which Eversource itself has characterized exports to the distribution grid by customer-generators as “sales” to the utility, which is research that Eversource could have done itself as all cited references are documents in the possession of (and were created by or for) Eversource itself, including the prior testimony of one of Eversource’s expert witnesses in this current case, Edward Davis, who explained in DE 16-576 that all “excess generated power” by net metered customer-generators that “is delivered to the Company’s electric system” can be characterized as “wholesale sales” of electricity. (Emphasis in bold is added to the quotations below.)

1. Eversource’s tariff<sup>4</sup> itself places net metering terms and conditions under the section 35 heading “**Rates for Purchases from Qualifying Facilities**” and then states that “Projects 1,000 kilowatts and under using renewable generation shall have the option of being served under the Net Energy Billing Service ....”
2. Eversource’s direct testimony in DE 16-576, the docket that established NEM 2.0, still currently in effect, repeatedly refers to export to grid by customer-generators as “sales”:

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<sup>4</sup> NHPUC NO. 10 - ELECTRICITY DELIVERY PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE DBA EVERSOURCE ENERGY, p. 24, accessed on 2/18/24 at [https://www.eversource.com/content/docs/default-source/rates-tariffs/electric-delivery-service-tariff-nh.pdf?sfvrsn=b0faa55d\\_18](https://www.eversource.com/content/docs/default-source/rates-tariffs/electric-delivery-service-tariff-nh.pdf?sfvrsn=b0faa55d_18).

In the “Joint Testimony of Richard C. Labrecque & Russel D. Johnson” on behalf of Eversource, dated 10/24/16<sup>5</sup>:

- At page 4, line 13-14: “The ‘**sale** channel’ records all net energy delivered from the customer to Eversource.”
- At page 4, lines 21-22: “the **sale** channel only records the net power exported from the property to the Eversource system.”
- At page 8, lines 8-10, characterizes customer-generators exports as “being compensated more for excess power (i.e. exported kWh in the **sale** channel) than it is truly worth in the wholesale energy marketplace.”
- At page 10, lines 7-8, “This net surplus is measured in the ‘**sales** channel’ of the Eversource meter.”
- At page 11, table on line 1 shows for a net metered customer-generator exporting power to the grid “Metered **Sales** (kWh)” of 350 “After Solar”.
- At page 28, lines 17-18: “RECs are a source of revenue over and above that related to the **sale** of energy and capacity.”
- At Exhibit RCL-RDJ-1, page 2 of 6 under “Small Project Assumptions”: “the other 50% is exported to Eversource and is **accounted as a purchased power expense** at the full retail rate”.
- At Exhibit RCL-RDJ-1, page 5 of 6 under “Large Group Host Assumptions”: “100% of annual production earns a Group Host **payment** at the Default Energy Service rate[.] **These payments are recorded as Purchased Power expenses** at the Default Service rate”.

In the “Testimony of Edward A. Davis” on behalf of Eversource, dated 10/24/16<sup>6</sup>:

- At page 4 of 10 (Bates page 41), lines 3-14:

“The Company’s metering also measures the amount of excess power a customer’s on-site generation produces beyond what is being used by the customer on its premise. **This excess generated power** is delivered to the Company’s electric system. This **will be referred to as a wholesale sale of electricity**. Wholesale **sales** are measured volumetrically, in units of energy (kWh).

“Retail purchases and **wholesale sales** measured over the course of a billing cycle are used in calculating charges and credits on customer bills. During the billing cycle, when a customer is purchasing energy there is no wholesale **sale**, and vice versa. Thus, retail purchases and **wholesale sales** by DG customers occur at different times and are separate transactions.

“As described in the testimony of Messrs. Labrecque and Johnson, since net energy billing reduces the purchases a customer pays for by offsetting retail purchases by **wholesale sales** ...”

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<sup>5</sup> Found as tab 56 and as Exhibit 14 in the docket book for [DE 16-576](#).

<sup>6</sup> Found as tab 56 and as Exhibit 15 in the docket book for DE 16-576.

- At page 5 of 10, starting at line 21:

“Q. How will net energy billing and **sales** of excess energy be compensated? A. This portion of the Company’s proposal addresses the retail purchase and **wholesale sale** of actual energy by a DG customer. Under the Company’s proposal, customers continue to receive net energy billing of charges for energy supply service for any surplus generation they **sell** to the grid within a given month.”

3. In the Reply Brief of the Joint Utilities in DE 23-026, dated 7/10/23, and signed by Senior Counsel David Wiesner on behalf of Eversource Energy, the Joint Utilities argue that in the circumstance where a customer-generator is being paid in cash for net excess power at the end of period in time (presumably annually, if not monthly) then that transaction does indeed constitute a sale of electricity.<sup>7</sup> Specifically the Joint Utilities argue that such a sale constitutes as “wholesale sale in interstate commerce.”<sup>8</sup> While CPCNH disagrees that such a sale is necessarily a sale in interstate commerce under FERC jurisdiction instead of constituting an intrastate wholesale sale under state jurisdiction, particularly as part of a state policy of net metering,<sup>9</sup> we do agree that those transactions can be characterized as a wholesale sale. For those customer-generators whose output is also being sold into the ISO New England market, those entities and the rates at which they sell their exports to the grid are FERC jurisdictional as they are selling in interstate commerce in a federal market by virtue of their registration as a “Generator” with ISO New England and participation in that market.
4. Eversource’s website for NH net metering<sup>10</sup> clearly lays out the fact that some net metered customer-generators<sup>11</sup> are receiving cash compensation and if they are a group host that compensation will be reported to the Internal Revenue Service as taxable income on Form 1099. (Presumably from a “sale” of kWh, since that is what is being compensated rather than some service or other commodity, such as Renewable Energy Credits.)

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<sup>7</sup> At page 5 of the Joint Utilities Reply Brief in DE 23-026, found at tab 20: “Net metering involves three possible “situations”: (1) a retail load of a retail net metering customer is being served by a resource located behind the retail customer’s meter; (2) power is flowing out from a net metering customer’s meter because there is more production than load and the retail customer is being credited by its utility on either a kWh or \$/kWh credit basis for the excess energy flowing out; or (3) **at the end of a period, a retail net metering customer is being paid in cash, not credit, for net excess power produced.**”

<sup>8</sup> *Id.*, at 6: “Situation 3 was explicitly found in the cited *Sun Edison* case to be a **wholesale sale in interstate commerce** that might be exempt from FERC rate regulation under PURPA.”

<sup>9</sup> See also Response to DR 1.7.

<sup>10</sup> <https://www.eversource.com/content/residential/about/doing-business-with-us/interconnections/new-hampshire/new-hampshire-net-metering> accessed on 2/18/25.

<sup>11</sup> This group likely includes most, if not all, customer-generators that are simultaneously ISO New England market participants selling their power into the FERC jurisdictional interstate wholesale market.

**Is a customer able to receive a payment (e.g., cash or check) for the monetary credit for surplus energy that accumulates on the billing account?**

Yes, but only in limited circumstances. A customer who closes an account (e.g., moves to a new property) may request a payment for a credit balance on the account. Otherwise, customers may only request a payment once per year, following the March billing cycle, provided that the accumulated credit balance is in excess of \$100.

The FAQ on this question “How is a group host credited on their electric bill for the power they export to the Eversource system?” concludes with this note:

“Please note, all payments to group hosts are considered taxable income under IRS rules, and a 1099 form will be issued annually to each group host.”

Finally, I note that while Eversource has only conceded that intrastate wholesale sales of electricity occur in Hawaii, Alaska, and the ERCOT region of Texas<sup>12</sup>, because those grids are physically isolated from interconnection to other states, they have never, to my knowledge, addressed the ruling by the D.C. Circuit Court of Appeals in 2020 that: “States retain their authority to prohibit local ESRs from participating in the interstate and intrastate markets simultaneously, meaning States can force local ESRs to choose which market they wish to participate in.”<sup>13</sup> ESRs refers to energy storage resources. Throughout this opinion, the Court uses the term “markets” interchangeably with the term “wholesale markets.” In this simple sentence, the D.C. Court of Appeals recognizes that both federal interstate markets for electricity sales and intrastate markets for electricity sales under state jurisdiction can and do exist simultaneously within a single State, consistent with the U.S. Supreme Court’s *EPSA* case as described in my response to D.R. EE to CPCNH 1.7 and repeatedly cited by the Appellate Court in this case, such as at 1181 and at footnote 5 at 1186.

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<sup>12</sup> DE 23-026, Reply Brief of the Joint Utilities, 7/10/23, at 12.

<sup>13</sup> *Nat’l Ass’n of Regul. Util. Comm’rs v. FERC*, 964 F.3d 1177 (D.C. Cir. 2020) at 1188.