



Jurisdiction Over Wholesale/Retail Loads

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- “As a federal agency, FERC is a “creature of statute,” having no constitutional or common law existence or authority, but *only* those authorities conferred upon it by Congress. Thus, if there is no statute conferring authority, FERC has none.”

Atl. City Elec. Co. v. FERC, 295 F.3d 1, 8 (D.C. Cir. 2002)

- (b)(1) The provisions of this subchapter shall apply to the **transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce** The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction . . . over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.
- (d) The term “sale of electric energy at wholesale” when used in this subchapter, means a sale of electric energy to any person for resale.

- Federal Power Act “limit[s] FERC’s sale jurisdiction to that at wholesale,” reserving regulatory authority over retail sales (as well as intrastate wholesale sales) to the State”
- FERC’s jurisdiction is limited to rules or practices that “*directly* affect the wholesale rate”

FERC v. Elec. Power Supply Ass'n, 136 S.Ct.760, 774-775 (2016).

“The Commission has rejected the argument that the provision of station power is a practice directly affecting rates for wholesale sales subject to the Commission's jurisdiction, explaining that station power is a sale for end use and the Commission has no jurisdiction over sales for end use.”

Indiana Mun. Power Agency City of Lawrenceburg, Indiana, 174 FERC ¶ 61,035, 61,150 (2021)

- Co-located loads served directly and solely by a generator do not involve the “transmission of electric energy in interstate commerce” or “the sale of electric energy at wholesale in interstate commerce”
 - Not wholesale of electric energy:
 - Co-located loads are end-users of the electricity so the sale between the generator to the co-located load is not a sale of electricity for resale
 - Not transmission of electric energy
 - Co-located loads without service from the system are served solely by the generator and not served from the grid
 - Such sales to co-located load do not *directly* affect wholesale rates

PJM Does Not Have Privity to Charge Co-Located Loads that Are Served Solely by a Generator

- Based on the foregoing, co-located loads served solely by a generator are not FERC jurisdictional
 - Note that this conclusion does not apply to co-located load with service from the system.
- FERC cannot set rates where jurisdiction does not exist (i.e., retail/non-wholesale)
 - PJM cannot charge such co-located loads as it is outside of FERC's jurisdiction.
- Such co-located loads are not represented in the wholesale market by LSEs so there is no mechanism for PJM to charge such loads.

- Co-located loads served solely by a generator are not wholesale sales so the RERRA has jurisdiction over what charges are assessed to them. Concerns with the retail treatment of such loads must be addressed through state proceedings.
- Stakeholder discussions are most productively focused on the areas subject to FERC jurisdiction:
 - Rules applicable to the generator participating in the wholesale market
 - Any portion of co-located load that is served by the system (this is only possible in the second configuration under discussion)

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