Alliance for Climate Transition (“ACT”) and Solar Energy Industries Association (“SEIA”)
Docket No. 26-08-05
Response to Interrogatory CAE-40
Date of Submission: August 28, 2026
People Responsible: Tim Snyder (ACT); Ruthie DeWit & Jeanne Armstrong (SEIA)

Question:

CAE-40 Eversource Comments, July 9, 2026, pp. 5-8. Respond to Eversource’s legal and economic arguments opposing development of a retail TOU tariff for standalone FTM storage. Specifically: (a) explain the legal basis supporting the Authority’s jurisdiction to establish such a tariff; and (b) explain why such a tariff would remain economically attractive if it were revenue neutral and included all applicable retail rate components, including non-bypassable charges.

Response:

The Joint Commenters address the legal and economic questions raised by Eversource by identifying the characteristics that would allow a retail TOU tariff for standalone FTM storage to fall within the Authority's jurisdiction and to attract participation. More than one structure could satisfy those characteristics. The Joint Commenters do not propose a specific tariff design in this response, including period definitions, rate levels, or compensation values, which would be developed at the program design stage.

(a)

In its comments, Eversource takes the position that both the purchase and sale pursuant to a retail TOU tariff for standalone FTM storage “are facially Federal Energy Regulatory Commission (“FERC”) jurisdictional wholesale transactions.” Its argument in support of this position consists of conceding that the sale from the EDC to the standalone FTM storage facility could in fact under certain circumstances be considered under the jurisdiction of the Authority, but that the Authority cannot set a rate for a sale from a FTM storage resource to an EDC, absent the EDC itself consuming the power (i.e., a retail sale) or it being a wholesale sale of energy under the Public Utilities Regulatory Policy Act (“PURPA”) which is limited to qualifying facilities. Eversource’s legal interpretation of the application of FERC jurisdiction to a retail TOU tariff for standalone FTM storage is simply too narrow, taking into account neither the limitations on FERC’s jurisdiction nor the potential attributes of such a program.

The limits of FERC’s jurisdiction are set forth in Section 201(b) of the Federal Power Act. FERC has jurisdiction over “the transmission of electric energy in interstate

commerce and to the sale of electric energy at wholesale in interstate commerce."[1] Thus, for a standalone FTM storage program to be FERC jurisdictional three components are necessary: (1) a sale of electric energy (2) at wholesale (3) in interstate commerce. Absent the presence of all three traits, a transaction is not FERC jurisdictional. Under a properly structured FTM storage program, none of these attributes need be present.

Eversource's conclusion that the discharge of energy from the FTM storage facility onto the EDC system would be a wholesale sale of energy to the EDC presumes the nature of the transaction, something which has not yet been determined by the Authority. A program by which the storage facility is compensated by the EDC based on the value of discharging to the grid at certain times of the day is not a sale of energy, much less a wholesale sale. Rather it is a load reduction initiative, through which the storage facility would be compensated for the impact its discharges to the grid have on lowering stress on the electric grid during peak demand and as well as enabling the deferment of new capacity build. Such a program is clearly a state jurisdictional program.

Indeed, through the Energy Policy Act of 2005, Congress provided direction to states to undertake a number of retail-related initiatives, including net metering, smart meter deployment, and demand response implementation.[2] These provisions amended PURPA as they relate to matters within state regulatory authority. For example, Section 2621(a) requires each State regulatory authority to consider each standard established by subsection (d) and "make a determination concerning whether or not it is appropriate to implement such standard to carry out the purpose of this chapter."[3] Subsection (d) includes not only net metering, but energy efficiency investments, conservation and demand response, integrated resource planning, and load management techniques, among other programs. An FTM standalone storage program designed to provide value to the grid is analogous to and, indeed, entirely consistent with the programs cited above that Congress encouraged the states to undertake. For example, New York has adopted and implemented a Value of Distributed Energy Resources Program that compensates standalone battery energy storage systems through a multi-part "value stack" tariff based on when and where power is supplied to the grid. Similarly ,the Illinois Commerce Commission approved statutorily mandated tariffs establishing scheduled dispatch virtual power plant programs for both BTM and FTM storage, including standalone FTM storage, at a predetermined compensation. The fact is that had Congress intended to provide federal jurisdiction over these programs, Congress would have made that delegation. It did not do so.

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[1] 16 U.S.C. § 824(b).
[2] Energy Policy Act of 2005, sections 1251 and 1252 , amending 16 U.S.C. § 2621(d).
[3] 16 U.S.C. § 2621(d).

Moreover, the Authority has already exercised its jurisdiction, consistent with the Energy Policy Act of 2025, to approve comparable storage programs pursuant to which participants are compensated based on the value they afford the grid. For example, as recently modified, the Energy Storage Systems program is now an active dispatch demand response program pursuant to which storage resources receive performance payments calculated on average kilowatts discharged during peak events called by the EDCs.[4] Similarly, the Connected Solutions program (now closed to new applicants) was a demand response program under which the EDCs paid customers for battery discharge during dispatched events, at performance rates per average kilowatt.

Eversource appears to recognize that there is a PURA jurisdictional path forward for the implementation of a standalone FTM storage program. In a May, 2, 2025 Brief filed in Docket No. 25-01-015,[5] Eversource states:

> "FERC has explained, 'where an entity is only engaged in the provision of demand response services, and makes no sales of electric energy for resale, that entity would not own or operate facilities that are subject to [FERC's] jurisdiction and would not be a public utility that is required to have a rate on file with [FERC]." Similarly, under a load reducer construct, the FTM storage resource would not resell its energy at wholesale, much like a demand response provider. This means that if the FTM storage program adopts a construct under which the storage resource acts as demand response or a load reducer, the resource cannot purchase wholesale power for charging, nor may it use the WDT and ISO-NE Tariff to be delivered energy. Rather, the storage resource would have to purchase delivered power at retail rates, because it is not engaging in a resale. Said differently, under the Supremacy Clause and doctrine of preemption, any FTM storage resource serving as a load reducer cannot purchase wholesale power or use the WDT."

In short, as recognized by Eversource, a program that is structured such that the storage facility purchases energy at a retail rate for charging and acts as a load reducer when discharging, is not FERC jurisdictional.

(b)

A bidirectional retail TOU tariff can be economically attractive to standalone FTM storage without exempting such resources from any otherwise-applicable retail rate component, including non-bypassable charges. Three features of the tariff account for

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[4] Although the storage resources at play in the ESS are BTM, such distinction is irrelevant with respect to FERC jurisdiction. The question remains whether the dispatch of the stored energy is a wholesale transaction. In both cases it is not.

[5] Eversource referenced this brief in its July 9, 2026 comments, p. 6 footnote 11.

that, and each is available within a structure that holds the electric distribution company's total revenue recovery constant.

The first is time differentiation of retail charges. Revenue neutrality constrains the total revenue the electric distribution company recovers. It does not require identical rates in every hour, or identical bills for every customer taking service under a given rate. The Authority may assign lower charges to super-off-peak hours and higher charges to peak hours while holding forecasted total recovery constant, reflecting underlying drivers of system costs. A storage resource that concentrates charging in the lowest-cost hours would pay less over a year than an inflexible load consuming the same volume, because the tariff prices hours differently and the resource can shift when it consumes. That differential arises from the time structure of the rate itself, and does not depend on the treatment of any particular charge.

The second is the export side for services that are not included in rates today. That value includes local peak and congestion relief, reduced distribution losses, and avoided or deferred distribution investment. The Joint Commenters identify these benefits more fully in response to CAE-42. A bidirectional tariff could assign peak, super-peak, or location-specific compensation to distribution benefits that are verified through interval metering and defined settlement rules.Credits paid for export under this component of a TOU rate should be offset by reductions in utility costs in other components of the utility cost recovery, resulting in a revenue neutral design. For example, payments under this rate related to avoided distribution investment should result in less distribution infrastructure that needs to be recovered under another portion of the utility rate.

The third is cost certainty. ISO New England publishes day-ahead locational marginal prices one day in advance of the operating day, and real-time prices settle at five-minute intervals.[6] A conventional TOU tariff establishes prices for defined periods in advance of the period. Where the Authority establishes reasonably stable periods and rates, an operator could forecast its charging cost, and therefore its expected operating margin, with greater confidence than under exclusive exposure to nodal wholesale prices.[7] A project may rationally accept a known off-peak charging price above its expected wholesale cost, where the wholesale price may vary materially and the certainty improves budgeting, contracting, and financing terms.

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[6] ISO New England publishes Day-Ahead Energy Market results on the day prior to the operating day and settles Real-Time Energy Market prices at five-minute intervals. *See* ISO New England, Market Rule 1, Section III; ISO New England, *Energy Markets*, https://www.iso-ne.com/markets-operations/markets/

[7] *See* U.S. Department of Energy, *Demand Response and Time-Variable Pricing Programs*, https://www.energy.gov/cmei/femp/demand-response-and-time-variable-pricing-programs; National Association of Regulatory Utility Commissioners, *Primer on Rate Design for Cost-Reflective Tariffs*, https://pubs.naruc.org/pub/7BFEF211-155D-0A36-31AA-F629ECB940DC.