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Subsidies, Climate Change, Electric Markets and FERC

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We want our electricity to be cheap, reliable, and green. But are efforts to promote these ends through subsidies endangering the health of electricity markets? In a talk based on a recent *Energy Law Journal* paper, "Subsidies, Climate Change, Electric Markets and the FERC," John Moot, a partner with the law firm Skadden, Arps, Slate, Meagher & Flom, and former General Counsel for the Federal Energy Regulatory Commission, spoke on Monday about the potential tension between a desire to promote specific policy outcomes and the desire to maintain a robust market, and the role of the FERC in protecting the market structure.

Observing that we are living in a "world of second best initiatives," Moot outlined the growing role of subsidies in promoting desired outcomes in electricity markets. The motivation behind the development of electricity markets was to allow for open competition to support investment in efficient electricity generation. However, over time, there have been an increasing number of government interventions in pursuit of a cheap, reliable, green energy supply. There have been subsidies for conventional generation that have depressed capacity market prices and the capacity markets themselves have been criticized as administrative constructs that limit the evolution of more dynamic pricing in the energy and ancillary service markets. For renewable energy, subsidies take various forms, including solar net metering, federal tax credits, and renewable energy mandates. These subsidies attempt to address real market failures like externalities associated with carbon emissions, Moot observed, but they do so inefficiently, treating energy resources unequally in ways that distort the market even as they try to address market distortions associated with carbon externalities.

Thus, amidst all of these good policy intentions, Moot warned, there are also costs. At a minimum, such measures change market incentives for investment and energy production in ways that may have unintended effects like making nuclear power less competitive or favoring rooftop solar over utility-scale solar. There is a danger that we will weaken the markets themselves to the point where they no longer are significant drivers of investment decisions, with the results that the efficiencies of market competition are significantly undermined.

By statute, the FERC has some authority to protect markets, with a mandate to ensure that wholesale electricity prices are "just and reasonable." But, Moot noted, "FERC can't become the subsidy police." History has shown practical limits to what FERC can accomplish in the face of strong policy opposition—for example, the failure of FERC's efforts to promulgate a Standard Market Design for electricity markets, in the face of strong state and Congressional resistance. FERC will need to prioritize, Moot suggested, focusing on the items most important to the preservation of markets, and avoiding pressures to pursue policy outcomes directly at the expense of market.

Moot spoke as part of the Kennedy School's Energy Policy Seminar Series, which is jointly sponsored by the Energy Technology Innovation Policy research group of the Belfer Center and by the Consortium for Energy Policy Research of the Mossavar-Rahmani Center on Business and Government.