HONORABLE MENTION

Carbon Taxation by Regulation

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This Article argues that, even though a carbon tax remains politically elusive, "carbon taxation by regulation" has begun to flourish as a way of financing carbon reduction. For more than a century, energy rate setting has been used to promote public good and redistributive goals, akin to general financial taxation. Various non-tax subsidies in customer energy rates have enormous untapped potential for promoting low-carbon sources of energy, while also balancing broader economic and social welfare goals. While carbon taxation by regulation offers many benefits, regulators' narrow fixation on consumer protection and economic goals has hobbled realization of its potential. In comparison to a national carbon tax, customer subsidies in regulation are piecemeal, isolated in focus, and fragmented. They also have not been sufficiently attentive to revenue shortfalls and burden allocation, important fairness and equity issues, or negative and positive jurisdictional spillovers. . . . [T]his Article illustrates how decades of unaligned approaches to taxation and regulation have contributed to substantial carbon lock-in in the energy sector . . . [and] describes how many state and federal policies adopted over the past few decades endorse the use of ratepayer subsidies [or so-called] internal subsidies to promote the impending transition to deep decarbonization, even without a carbon tax. . . . The Article then uses the optimal design of a carbon tax to identify some basic principles to help guide the reform of internal subsidies . . . [and] also advances a menu of policy reforms to better advance carbon taxation by regulation in a principled manner." [These basic principles include neutrality in addressing "incumbents and new-entrant energy resources," "efficient cost spreading through broad-based application," attention to equity and fairness with respect to consumers and suppliers, and jurisdictional evenhandedness to mitigate spillovers and arbitrage. In addition, the Article proposes (1) state policy reforms that include better articulating and matching the benefits of subsidies, such as improving alignment of "[Renewable Portfolio Standard] credits with the deep decarbonization attributes for each resource"; (2) federal agency initiatives to "leverage the better use of internal subsidies in the transition to grid decarbonization," and (3) congressional approaches, such as providing better information about the use of carbon subsidies by "requiring the examination of carbon costs in agency regulatory impact assessment and cost-benefit analysis."]

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