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Chris Parker's Opening Statement

Utah sits at the crossroads of the West and has a reputation as one of the nation's consistently best-managed states in large part because of an energy policy that enables stability, ensures reasonable energy rates, and allows innovation. Energy and self-determination are two of the four cornerstones Governor Herbert has described as keys to Utah's prosperity.

Utah will resist any direct, pre-dispatch carbon price mechanism in RTO/ISO markets because state policies should not have such a direct effect on wholesale markets. Regional wholesale electricity markets exist to trade electricity for dollars. FERC has no authority to tax resources in its markets. States have no authority to set a carbon price that directly changes dispatch and prices in wholesale electricity markets. The fact that states' resource decisions will affect the wholesale markets does not license direct intervention in dispatch and pricing outcomes in wholesale markets. This would leap the boundaries of state authority, exporting state policies to the entire market. Federal market regulation does not license extraterritorial state taxation.

An underlying premise of the Federal Power Act is that areas of state authority remain out of the reach of FERC, and vice versa. Commissioner Glick's aspirational article in the Energy Law Journal last year noted this distinction and expressed the view that "the Commission's commitment to cooperative federalism should facilitate state efforts to decarbonize the electricity sector."[1] Organized markets have done this to a great degree already, but direct carbon pricing mechanisms that might serve as cooperative federalism for some states are hostile federalism to others.

State energy policies in the West differ dramatically. Recent reliability issues in California have highlighted these differences' consequences. For FERC to respect all states' policy preferences in their spheres of authority, FERC must not allow adoption of carbon pricing mechanisms that alter the dispatch or price paid to producers of electricity in its wholesale markets.

If a generator in Utah would run in a given dispatch period in an organized market based on its marginal cost, but it finishes out of the money solely because of another state's carbon price adder, the other state's policy has illegal extraterritorial

[1] 40 Energy Law J. 1, 15 (2019).

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effect. Prohibiting this outcome does no violence to the other state's appropriate carbon policy interests.

In recent years, some states have been clear about their desires to regulate extraterritorial conduct. Discussions about leakage abound. To the extent the costs of carbon policies and leakage are confined to the concerned state, it is appropriate. But it is clear some states and market participants are seeking to influence the broader markets beyond their boundaries and authority.

FERC's allowance for full cooperative federalism, respecting each state, does not leave a policy gap even if carbon pricing mechanics are thus less efficient. Other mechanisms exist for addressing the costs of carbon determined by each state. Bilateral contracts can satisfy state standards, payments by load-serving entities for carbon costs can suffice. Other tools may exist. But FERC should not allow direct alteration of its markets' dispatch by states' carbon policies, especially in ways that *increase* prices. By requiring states to lean on other mechanisms, FERC can prevent one state's policy choices from burdening other states.