

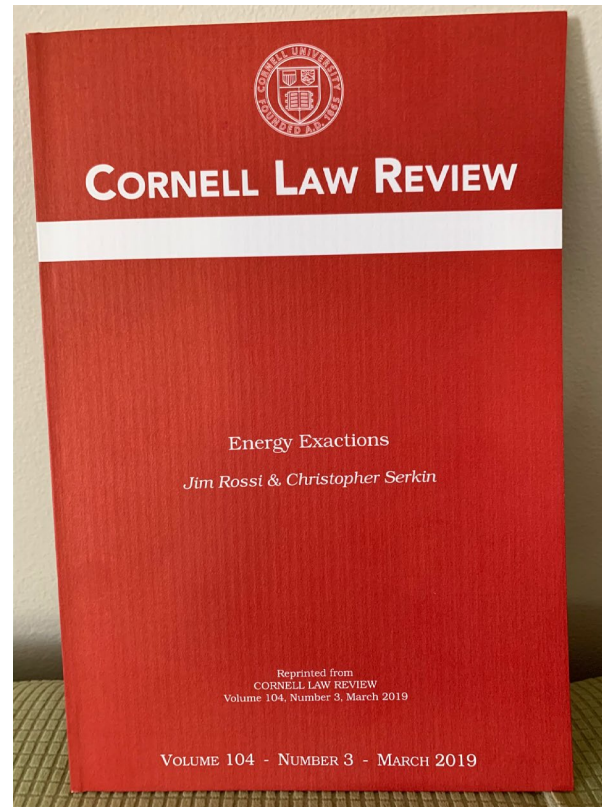
Energy Exactions

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Jim Rossi & Christopher Serkin, *Energy Exactions*, 104 CORNELL LAW REVIEW 643 (2019), available online at

<https://scholarship.law.cornell.edu/clr/vol104/iss3/3/>

Exactions and Impact Fees



Exactions and Impact Fees

- Development often produces fiscal benefits
 - Property taxes
 - Economic activity
- Development often also produces burdens on local infrastructure
 - Roads
 - Schools
 - Water systems
 - Wastewater
- Exactions and impact fees force developers to internalize some of those costs of development

Exaction and Impact Fee Examples

- Impact fees
 - Single-family residence, impact fees include \$1,500 in road and transit fees
 - Commercial office space
 - \$.97 per square foot towards affordable housing
 - \$1,519 per 1,000 square feet towards transportation mitigation program
- Nonmonetary exactions
 - Onsite dedications of land
 - Streets
 - Open space
 - Construction of on-site improvements
 - Sidewalks
 - Streetlights
 - Construction of off-site improvements
 - Abutting streets
 - Water and sewer upgrades

Problem -

- Most local communities (and especially land use regulators) “outsource” their energy needs.
- Traditional utility planning doesn’t always encourage local communities to seriously address their energy needs.

-Energy engineers in this process often say “energy follows load” – demand is an input but utilities have little incentive to reduce or manage it.

-Many economists believe that traditional regulation aided-and-abetted a form of rent seeking by the monopolist – enabling a few (the utility’s investors) to benefit at the expense of the many.

Our Solution - Energy Exactions

- Local fees on development that will impose new burdens on the energy system or limits on the timing of development to avoid strains on the energy grid -> give local governments a legitimate point of entry in energy planning.
- An energy exaction could place a price on marginal changes in a community's energy use.
 - E.g., \$1 per kWh (or ~ \$10k average) fee on new homes, etc.

Benefits for energy regulation

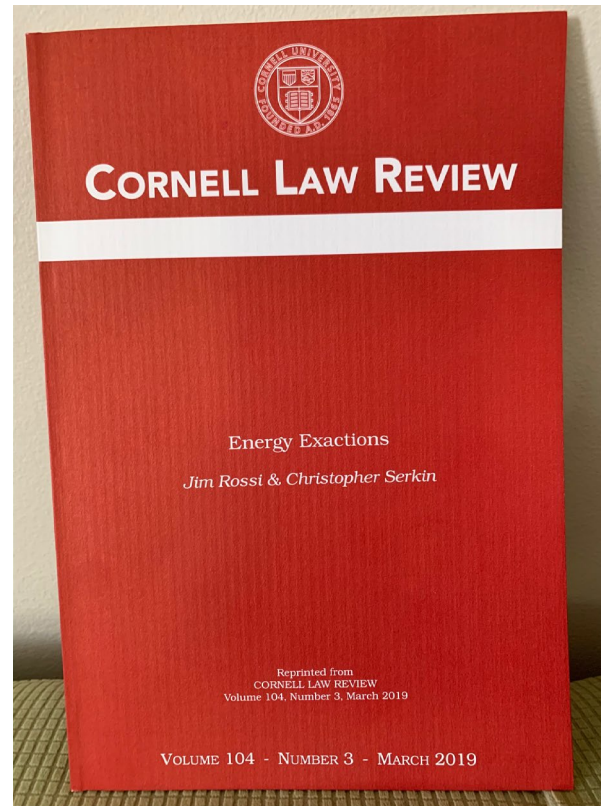
- 1) Generates better information about customer demand and alternatives to building new power plants;
- 2) Diversifies/decentralizes risk taking; and
- 3) Promotes a form of interjurisdictional competition – between the utility (or its state regulator) and local communities.

Legal Barriers?

- 1) Intrastate preemption
 - a) state utility franchise laws?
 - b) rate regulation?
- 2) Legislative authorization for energy exactions?
- 3) Unconstitutional conditions?

Concerns

- Is this so different in kind from other land use exactions that it should be approached as a different form of regulation?
- What if prices are not accurate or are set too high? Possibility of “double taxation”??
- Who in the community will ultimately bear burden?
- “Jurisdictional reach” questions – possibility for mismatch between burdens and benefits?
 - But on net would this help correct for mismatch that would continue occur without community imposing any burden on growth related to energy?



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