Aug. 29  I. Introduction

This course provides an introduction to the field of energy law and regulation. The first class will start to address the following questions: What is energy law? Does the process of developing energy law differ on the state and federal levels? What private party actions are regulated and in whose interest is energy regulated? How does policy evolve through competing and/or complementary actions in the three federal branches of government? How is policy converted into statute and administered by federal or state administrative agencies? How, for example, have energy statutes and administrative policies developed from the 2003 blackout of the electricity grid in the Northeastern United States? What policies, laws and administrative agencies apply to the development of, for example, nuclear power plants, natural gas drilling facilities, hydroelectric power? Why and how does the process and policy for establishing electric rates relate to the development and operation of generating facilities? What factors affect the development of renewable power? These examples and others will be illustrated and explored as the semester progresses.

The first class will review expectations for the course, the course outline and reading materials, writing assignments, oral advocacy element, expectations for class participation, grading policy and other course logistics.

Required Reading:


* Please note: materials for individual classes may be added or deleted during the semester to capture current issues. Notice of such changes will be posted on the class website with sufficient advance notice before the applicable class.
Optional Reading:


- *Energy Daily* August 22-26 (if available)

Sept. 12 [SDS/DPY]

II. **Constitutional Basis for Energy Regulation**

This class will explore the aspects of Constitutional law and administrative agency implementation that underpin the theory and practice of energy law. The class will provide an overview of the Constitutional bases for the roles of state and federal governments in energy law. *Energy Daily* discussion.

What interests do the states have in the production and delivery of energy (electricity, natural gas, oil)?

What interests does the federal government have in the production and delivery of energy?

Do the state interests, as embodied in state law, compete with federal interests? How are any such conflicts resolved?

Are the interests of consumers reflected consistently in state and federal law?

Required Reading:

- Tomain and Cudahy, pp. 110-114

  


• *Energy Daily* issues, September 6-9

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**Sept. 19**  
III. **Basics of Electric Utility and Natural Gas Rate and Certificate Regulation**

This lecture will provide an overview of the policy rationales for public utility regulation and an introduction to methods of rate regulation. The class will also review a typical state utility regulatory statute and the Federal regulatory framework for electric utility and natural gas regulation. The Public Utility Holding Company Acts of 1935 and 2005 will be discussed. Finally, this session will touch lightly on the use of market-based rate regimes in electricity markets.

Why are electric and natural gas rates regulated?

What are the competing interests of legislators, regulators, consumers and utility/energy providers in the establishment of rates?

What factors should the FERC consider before issuing a certificate for a natural gas facility?

What factors have states outlined as relevant to the decision whether to grant a certificate for an energy production or delivery facility?

*Distribution of Memo #1 Background Materials*

**Required Reading:**

- Excerpts from the Public Utilities Chapter of the North Carolina General Statutes, N.C. Gen. Stat. ch. 62. [posted]
- Federal Power Act, §§201, 203, 205, 206, 217, 219, 222, 316A.
- *Illinois Commerce Comm’n v. FERC*, 576 F.3d 470 (7th Cir. 2009)
• Natural Gas Act, §§4, 5 and 7

• *Energy Daily* issues Sept 12-16

Optional Reading:


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Sept. 26
[DPY/SDS]

IV. The “Siting” Class: Natural Gas Pipeline and Liquefied Natural Gas Facilities; Electric Transmission and Hydroelectric Licensing

This class will discuss the statutory frameworks and considerations taken into account by regulatory agencies for siting and licensing/certificating interstate natural gas pipeline and liquefied natural gas terminals, hydroelectric facilities by the Federal Energy Regulatory Commission and the highly fragmented process for siting electric transmission lines. The interaction among the federal licensing agencies and state agencies will be discussed. The framework giving rise to the highly contentious disputes about planning and the allocation of costs of new transmission lines also will be reviewed. *Energy Daily* discussion.

*Discussion of Memo #1 Assignment*

Required Reading:

• Tomain & Cudahy, pp. 332-348 (hydropower licensing), pp. 189-206 (natural gas regulation)

• *California v. FERC* 495 U.S. 490, 1990 U.S. LEXIS 2614, Syllabus and opinion.

• *PPL Montana*, FERC Project No. 2301-022, 121 FERC ¶62,198 (2007) (Pages 1-18—review to note the different factors going into the licensing of a hydroelectric project, not for the details of each section) (posted)


• *Piedmont Envtl Council v. FERC*, 558 F. 3rd 304 (4th Cir. 2009), [Parts I and II]

• *California Wilderness Coalition v. U.S. DOE*, 631 F. 3rd 1072 (9th Cir. 2011) (excerpts posted)

• Federal Power Act, Sections 4-10 of Part I, 16 U.S.C. §797-803 (skim); Part II, Section 216 (a) – (d)
• Natural Gas Act; §§3, 3A, 7(c)-(e), (h).

• Review N.C. Gen Stat. §§62.42 and 62-110 [from last week’s posting]

• Energy Daily issues September 19-23

Optional Reading:


Oct. 3
[SDS]

V. Nuclear Energy

This class provides an overview of the major laws, legal issues and ongoing policy debates related to the generation of nuclear power, ensuring the safety and financial protection of the public in event of a nuclear incident, the disposal of spent fuel and other radioactive wastes, waste reprocessing, nuclear power plant decommissioning and nuclear non-proliferation concerns. The class also will consider the potential for nuclear power to play a significant role in limiting emissions of greenhouse gases.

What role should nuclear power play in the U.S. and other countries' energy future?

To what degree has concern about climate change forced a "second look" at this generation source?

To what degree did the accident at Japan’s Fukushima plant affect U.S. attitudes on nuclear power?

In the U.S., how much steam has the nuclear "renaissance" really picked up, and how does continued gridlock over the Yucca Mountain spent fuel project affect the viability of this source of electric generation?

Required Reading:

• Tomain and Cudahy, pp. 299-314; 318-324

• Nuclear Waste Policy Act of 1982, §§114(a) – (d)

• The Keystone Center, excerpt from "Nuclear Power Joint Fact-Finding, Executive Summary," June 2007 (pp. 9-18). (posted)


• Testimony of David Lochbaum, Director – Nuclear Safety Project, Union of Concerned Scientists to Senate Energy and Natural Resources Committee re Fukushima

• In Re: Aiken County, Petitioner, D.C. Cir. Case No. 10-1050 (order issued July 1, 2011) (pp. 1-16)(posted)

• Energy Daily issues, Sept. 26 - 30

Optional Reading:


Oct. 10 [DPY] VI. Market Based Pricing of Electricity and Natural Gas, Regulation of Markets, Commodity Pricing Issues

This class will review the federal statutory and regulatory framework supporting the purchase and sale of electricity and natural gas at negotiated or market rates. The treatment of “demand response” as a commodity will be covered. The very different regulatory regimes and structures for sale of natural gas and electricity will be examined. This class will discuss the issues raised by federal (and state) “industry restructuring efforts” (not to be confused with deregulation) and the reactive actions of state and federal legislative and regulatory officials.

Does the FERC determination that a market is “competitive” justify departing from review of a public utility’s costs that otherwise underlie rates?

Who are the “public utilities” that obtain market based rates?

What role does open access transmission (electric)/transportation (natural gas) play in the creation of appropriate conditions for market based pricing?

What limits did the Lockyear decision impose on the FERC approval of market-based rates?
Memo #1 Due Date; Discussion of Memo #1

Distribution of Memo #2 Background Materials

Required Reading:


- California ex rel. Lockyer v. FERC, 383 F. 3d 1006, (9th Cir. 2004) [Excerpts posted]

- New York v. FERC, 535 U.S. 1 (excerpts posted)


- Energy Daily issues, Oct. 3-7

Optional Reading:

- Fueling the Price of Power (and Gas): The Rising Profitability of Pipelines and the Need for Collective Action, Makholm and Olson, The Electricity Journal, June 2011 (posted)

Oct. 17  
VII. Energy Efficiency and Conservation [Guest Lecturer: John Jimison]

This class will examine the incentives for energy efficiency and conservation included in pending legislative proposals to address climate change. The class also will briefly examine the significance of carbon capture and storage as an element of climate change policy, including potential regimes for managing public liability concerns. Note: the list of readings may be updated by the week before the class.

Discussion of Memo #2 Assignment

Required Reading:

- Tomain & Cudahy, pp. 367-370
• NRDC v. Abraham, 355 F.3d 179 (2d Cir. 2004) (read 184-191 on program background and procedural history).


• Energy Daily issues: Oct 10-14

Oct. 24 [DPY/SDS]  

This class will review the regulatory framework for automobile fuel economy standards under the applicable energy and clean air laws. It will evaluate the success of the 2009-2010 “Joint Rulemaking to Establish Vehicle GHG Emissions and CAFE Standards” by the U.S. Environmental Protection Agency and the U.S. Department of Transportation to attempt to set automobile mileage standards that will lead to a commensurate reduction in greenhouse gases and its successors. It will discuss the forthcoming Notice of Intent by the same two agencies to establish GHG Emissions and CAFE Standards for Model Years 2017-2025. This class also will discuss the renewable fuel standards to reduce gasoline consumption. NOTE: If EPA and DOT issue the Notice of Intent regarding model years 2017 – 2025 before the class, a summary will be posted as additional reading material for the class.

Required Reading:

• Congressional Research Service, Automobile and Light Truck Fuel Economy: The CAFE Standards (May 7, 2008)  

• Congressional Research Service, Alternative Fuels and Advance Technology Vehicles: Issues For Congress (February 13, 2009)  
  http://assets.opencrs.com/rpts/R40168_20090213.pdf

• Short Summary of the Renewable Fuels Standard:  
  http://www.epa.gov/otaq/fuels/renewablefuels/index.htm

• Announcement of National Renewable Fuel Standard Program for 2010 and Beyond:  
  http://www.epa.gov/otaq/renewablefuels/420f10007.htm


• Energy Daily issues: Oct. 17-21
optional Reading:

- EIA renewable fuels used for transportation.  
  http://www.eia.gov/renewable/alternative_transport_vehicles/index.cfm

Oct. 31 IX. State and Federal Regulation of Oil, Natural Gas and Coal Production

[SDS]

This session will review state and federal regulation of oil, natural gas and coal production and ownership rights. It also will provide an overview of federal lands onshore and offshore leasing and production regulation, including any offshore drilling moratoria and/or Congressional response to the Deepwater Horizon oil spill that may be enacted after the syllabus is finalized. It will also address issues in the production of natural gas via horizontal drilling and hydraulic fracturing.

Required Reading:


- Eliff v. Texon Drilling Co., 210 SW2d 558 (Tex. 1948)

- CRS, Offshore Oil and Gas Development: Legal Framework”, RL33404, September 20, 2010, pp. 1-20  

- RFF Backgrounder, "Deepwater Horizon and the Patchwork of Oil Spill Liability Law, June 2010, Nathan Richardson, pp. 1-6,  

- Deepwater, The Gulf Oil Disaster and the Future of Offshore Drilling, Report to the President, National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, pp. vi-xii,  

- The Upper Big Branch Report, Part V, Recommendations, pp. 1-5,  
  http://www.nttc.edu/ubb/

- Energy Daily issues: October 24 - 28

Optional Reading:

Nov. 7
[SDS]

X. Climate Change – Implications for Energy Law

One of the most challenging problems in U.S. energy and environmental policy is the debate about whether and how to limit greenhouse gas emissions and coordinate this with our obligations under an international climate change regime.

This policy debate has proceeded on multiple tracks: (1) a foiled effort in the U.S. Congress to enact legislation to reduce domestic emissions; (2) court ordered development of rules by the Environmental Protection Agency; and (3) ongoing international negotiations to develop a post-Kyoto Protocol global emissions regime.

As past and current Congressional debates illustrate, no realm of U.S. energy policy is untouched by the climate debate. Enactment of domestic legislation or regulations and/or agreement to any binding international regime will have disparate impacts on various energy sources; and affect electricity prices, fuel prices, and a broad swath of industry (including U.S. firms competing in international markets). The debate is all the more complex in light of a 2007 U.S. Supreme Court ruling that the Environmental Protection Agency (EPA) has authority to regulate greenhouse gas emissions under current law, which has led to EPA promulgation of rules to limit emissions from various sources.

This class will review relevant international agreements, past and current Congressional debates on domestic and international emissions limitation regimes and the potential effect of emissions limits on energy markets. Issues to consider are:

What are the prospects for a coordinated international response to the challenge of limiting greenhouse gas emissions?

Does the United Nations Framework Convention on Climate Change (UNFCCC) still provide a viable alternative for developed and developing nations to agree on a common strategy?

To what extent might other mechanisms (such as bilateral or multilateral agreements outside the UNFCCC system), complement the UN process?

Finally, to what degree will the de facto greenhouse gas policy propagated by the U.S. Environmental Protection Agency pursuant to its mandate under the U.S. Supreme Court's 2007 Mass v EPA decision provide assurance to other nations that America is engaging in the problem of addressing climate change? To what degree will this shape U.S. energy policy?
Required Reading:

- Excerpts from the United Nations Framework Convention on Climate Change and the Kyoto Protocol. (posted)
- Byrd-Hagel Resolution (S Res 98, 105th Congress). (posted)
- “Creating Economic Incentives to Conserve Forests through REDD”, Environmental Defense Fund, August 2009 (pp. 1-2) (posted)
- Greenhouse Gases and the Clean Air Act, A Useful Option for the Short Term", Resources for the Future, Dallas Burtraw (July 23, 2010)(posted)

Optional Reading:

- Climate Change 101, Pew Center on Global Climate Change (posted)
- “Carbon Capture and Sequestration (CCS)”, World Resources Institute, http://www.wri.org/project/carbon-capture-sequestration
- Energy Daily issues: Oct. 31 – Nov. 4

Nov. 14  
[DPY]  
XI. Renewable Energy

This class will include a discussion of the principal types of renewable energy facilities that have been developed in the United States or are being developed, including wind, solar and biomass. We will address regulatory issues relating to the development, financing and operation of renewable electricity facilities, including the renewable energy provision of the Public Utility Regulatory

What is the principal attraction of renewable resources on a policy basis?

What are the challenges of renewable energy development?

What are the incentives that government agencies provide to encourage the development and dispersion of renewable resources?

What practical problems have been identified about integrating renewables into the grid?

Which entities have jurisdiction over renewable resources?

Memo #2 Due Date; Discussion of Memo #2

Required Reading:

- National Atlas.gov overview of renewable energy sources in the United States: [http://www.nationalatlas.gov/articles/people/a_energy.html](http://www.nationalatlas.gov/articles/people/a_energy.html)


- *Energy Daily* issues November 7-11.

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**Nov. 21 [DPY/SDS]**

**XII. Energy Project Development**

This class will focus on particularly important contract, siting and related issues arising in connection with the development of electric generating and transmission facilities. The class will focus on the development through the lens of an offtake customer’s purchase agreement in connection with the development
of a new facility. This class will also discuss issues in siting of transmission lines, particularly long line, extra high voltage transmission.

Which entities are involved in the development of renewable energy projects?

What are their interests?

What transactions are involved in the development of renewable energy resources?

What role do federal and state incentives play in structuring the transactions?

**Required Reading:**

- (On Reserve at Library) Hoffman, Scott; *The Law and Business of International Project Finance*, Cambridge University Press, 3d edition, §§1.01-1.03, 1.08, 1.12[1], [2], 2.03, 7.07-7.10; Optional Reading: Chapter 19, §19.01, 19.03 – 19.10, 19.12 – 19.22

- Model Purchase Power Contract for a Wind/Renewable Facility (posted)


- *Energy Daily* issues November 14-18

**Optional Reading:**