

**SYLLABUS**  
**ENERGY LAW AND REGULATION (438-10)**  
**FALL SEMESTER 2008**

**Aug. 25**  
**[PFG/DWS]**

**I. Introduction**

This class provides an introduction to the field of energy law and regulation. The session will address the following questions: What is energy law? What are the key industries in the energy sector? What are the major policy drivers that shape energy law? The session also will review your expectations and our expectations for the course, the course outline and reading materials, writing assignments, expectations for class participation, grading policy, and other course logistics.

Required reading:

Tomain & Cudahy, Energy Law in a Nutshell, pp. 38-48 (Energy Facts and Overview) (hereinafter “Tomain & Cudahy”), as supplemented by updated statistical charts and graphics in course materials listed below.

Course Materials:

- Energy Information Administration, Annual Energy Review 2007 (selected energy statistical charts and graphics) (hereinafter “EIA”).
- T. Wirth, C. Gray, & J. Podesta, “The Future of Energy Policy,” 82 *Foreign Affairs* 132 (July/Aug. 2003).

Energy Daily issues August 21 & 22.

**Sept. 8**  
**[DWS/PFG]**

**II. Constitutional and Administrative Law Basis for Energy Regulation**

In this class we will briefly review the rationales for government intervention in energy markets. We will focus on the constitutional law bases and constraints on energy industry regulation – including the Commerce Clause, Supremacy Clause, Takings Clause, and Due Process Clause. We also will review the basic administrative procedure framework for conducting energy regulation, including the Administrative Procedures Act. Energy Daily discussion.

Required reading:

Tomain & Cudahy, pp. 26-33 (market failures); pp. 110-114 (constitutional principles); pp. 82-90 (administrative procedure);

Course Materials:

- Public Utilities Commission of Rhode Island v. Attleboro Steam & Electric Co., 273 U.S. 83 (1927).
- Schneidewind v. ANR Pipeline Co., 485 U.S. 293 (1988) (read Part II).
- Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989) (focus on Part III).
- Matrix: Federal Energy Regulation – Major Executive Agencies and Framework of Major Laws.
- Energy Daily issues September 2-5.

**Sept. 15  
[PFG]**

**III. State and Federal Regulation of Oil, Natural Gas, and Coal Production**

This session will review state regulation of oil, natural gas, and coalbed methane production and ownership rights. It also will provide an overview of federal lands and offshore leasing and production regulation, including energy policy implications (e.g., offshore drilling moratoria). Energy Daily discussion.

*Distribution of Memo # 1 background materials*

Required reading:

Tomain & Cudahy, pp. 158-67, 177-78; 206-213; skim 230-240.

Course Materials:

- Eliff v. Texon Drilling Co., 210 SW2d 558 (Tex. 1948).
- Amoco Production Co. v. Southern Ute Indian Tribe, 526 U.S. 865 (1999).

- Congressional Research Service, Outer Continental Shelf: Debate Over Oil and Gas Leasing and Revenue Sharing, pp. CRS-4 through CRS-10 (Jan. 22, 2008).
- Energy Daily issues September 8-12.

Sept. 22  
[DWS]

#### IV. Transportation: Vehicle Efficiency and Alternative Fuels

This class will review the regulatory framework for automobile fuel economy standards under the Energy Policy and Conservation Act. The class will also discuss current and proposed policies for promoting the development of alternative transportation fuels, focusing in particular on ethanol. Energy Daily discussion.

*Discussion of Memo #1 assignment*

Required reading:

Course Materials:

- Ending the Energy Stalemate, A Bipartisan Strategy to Meet America's Energy Challenges, National Commission on Energy Policy, pp. 8-18 (Dec. 2004).
- Congressional Research Service, Automobile and Light Truck Fuel Economy: The CAFE Standards (June 1, 2007).
- Congressional Research Service, Alternative Fuels and Advanced Technology Vehicles (May 2, 2007).
- Energy Daily issues September 15-19.

Sept. 29  
[PFG]

#### V. Geopolitics of Oil

This class will discuss what U.S. energy security means in the context of world oil markets, including the role of national oil companies in petroleum development outside the U.S.; the institutional structure of the international oil community, including the Organization of the Petroleum Exporting Countries, the Organization of the Arab Petroleum Exporting Countries, and the International Energy Agency; and national security consequences of oil dependency. Energy Daily discussion.

Required reading:

Course Materials:

- Carnegie Endowment, The Changing Role of National Oil Companies in International Energy Markets (Mar. 8, 2007) (conference summary).
- D. Victor, "OPEC Is Irrelevant," Newsweek Web Exclusive (Aug. 1, 2008).
- D. Yergin, "Energy Independence," Wall Street Journal (Jan 23, 2007).
- Council on Foreign Relations, National Security Consequences of U.S. Oil Dependency, pp. 3-11 ("Overview and Introduction"); pp. 26-30 ("Findings: How Dependence on Imported Energy Affects U.S. Foreign Policy"). Also at <http://www.cfr.org/energy/>.
- Energy Daily issues September 22-26.

**Oct. 6**  
**[DWS]**

**VI. Basics of Utility Regulation**

This class will provide an overview of the policy rationales for public utility regulation, and an introduction to methods of rate regulation. This session will review a typical state utility regulatory statute and the Federal regulatory framework for electric utility regulation. Finally, this session will review the use of market-based rate regimes in electricity markets. Energy Daily discussion.

Required reading:

Tomain & Cudahy, pp. 117-143 (utility ratemaking), pp. 264-285 (Federal electricity regulation).

Course Materials:

- Excerpts from the Public Utilities chapter of the North Carolina General Statutes, N.C. Gen. Stat. ch. 62:
  - § 62-2 Declaration of policy
  - § 62-32 Supervisory powers; rates and service
  - § 62-42 Compelling efficient service, extension of service
  - § 62-110, 110.1 Certificate of convenience & necessity
  - § 62-118(a) Abandonment and reduction of service
  - § 62-130 Ratemaking
  - § 62-131 Just and reasonable rates; efficient service
  - § 62-133 How rates are fixed

§ 62-134	Change of rates
§ 62-136	Investigation of existing rates
§ 62-140	Discrimination prohibited.
§ 62-155	Promoting conservation
§ 62-183	Grant of eminent domain

- Federal Power Act §§ 201, 205, 206, 222, 316A.
- Energy Daily issues September 29-October 3.

**Oct. 13**  
**[PFG]**

**VII. Two Key Issues in Electric Utility Regulation: Competition and Obstacles to Critical Infrastructure Development**

This class will cover the issues of (i) federal regulatory and legislative initiatives to increase competition in wholesale and retail electricity markets; and (ii) obstacles to investment in critical infrastructure development, focusing in particular on the development of new electricity transmission infrastructure and carbon sequestration projects. Energy Daily discussion.

*Memo # 1 due date; discussion of Memo #1.*

*Distribution of Memo # 2 background materials.*

**Guest Speaker: The Honorable Suedeen Kelly, Commissioner, Federal Energy Regulatory Commission (invited)**

Required reading:

Course Materials:

- New York v. FERC, 535 U.S. 1 (2002) (excerpts).
- Federal Power Act § 216(a)-(f).
- E. Wilson, M. De Figueiredo, C. Trabucchi, & K. Larsen, “Liability and Financial Responsibility Frameworks for Carbon Capture and Sequestration,” WRI Issue Brief (Dec. 2007).
- Energy Daily issues October 6-10.

**Oct. 20**  
**[DWS]**

## **VIII. Natural Gas Pipeline and Liquefied Natural Gas Certification; Hydroelectric Licensing**

This class will review the regulatory scheme for licensing hydropower facilities. We will cover the multi-agency process for issuing licenses under the Federal Power Act, and the interplay with the Endangered Species Act, the Clean Water Act, and other regulatory regimes. The class also will cover the certification process under the Natural Gas Act for regulating the construction of natural gas pipelines and liquefied natural gas terminals. Energy Daily discussion.

*Discussion of Memo #2 background materials and oral advocacy project.*

### Required reading:

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

### Course Materials:

- Edwards Manufacturing Co., 81 FERC 61,255 (1997).
- Natural Gas Act §§ 7(c)-(e), (h).
- Natural Gas Act §§ 3, 3A.
- Energy Daily issues October 13-17.

**Oct. 27**  
**[DWS]**

## **IX. Energy Efficiency & Conservation**

This session examines a range of regulatory and policy approaches to promoting efficient use of energy, including rate treatment of utility energy efficiency initiatives (including demand side management), regulation of appliance efficiency under the Energy Policy and Conservation Act, promotion of cogeneration under the Public Utility Regulatory Policies Act, income tax incentives, information and recognition programs such as Energy Star, and proposals for energy efficiency portfolio standards. Energy Daily discussion.

### Required reading:

Tomain & Cudahy, pp. 367-370 (conservation and energy efficiency).

### Course Materials:

- NRDC v. Abraham, 355 F.3d 179 (2d Cir. 2004) (read 184-191 on program background and procedural history).
- U.S. Dept. of Energy and U.S. Environmental Protection Agency, National Action Plan for Energy Efficiency, pp. ES-1 – ES-9 (executive summary) (2006).
- National Commission on Energy Policy, Ending the Energy Stalemate, A Bipartisan Strategy to Meet America’s Energy Challenges, (2004), pp. 30-37.
- Energy Daily issues October 20-24.

Nov. 3  
[PFG]

## X. Renewable Energy

This class will include a video describing solar, wind, and other renewable energy technologies. We also will address regulatory issues relating to the development, financing and operation of renewable electricity facilities, including the renewable energy provisions of the Public Utility Regulatory Policies Act, State (and proposed Federal) renewable portfolio standards, and State and Federal tax and other financial incentives. Energy Daily discussion.

*Memo # 2 due date; discussion.*

### Required reading:

Tomain & Cudahy, pp. 355-366 (renewable resources).

### Course Materials:

- EIA, Annual Energy Review 2006 (selected statistics and charts).
- EIA, Policies to Support Non-hydro Renewable Energy in the United States and Selected Countries, pp. 6-10 (Feb. 2005).
- DSIRE, Renewables Portfolio Standard: California (summary), [www.dsireusa.org](http://www.dsireusa.org).
- Van Ness Feldman, State Renewable Portfolio Standards (matrix).
- Energy Daily issues October 27-31.

Nov. 10  
[DWS]

## XI. Nuclear Energy

This class provides an overview of major laws, legal issues, and ongoing policy debates related to the generation of nuclear energy, the Price-Anderson Act, the disposal of nuclear wastes, the decommissioning of nuclear power plants, and non-proliferation. Energy Daily discussion.

**Guest Speaker: Elizabeth (“Betsy”) A. Moler, Executive Vice President of Government and Environmental Affairs and Public Policy, Exelon Corporation; Former Deputy Secretary of Energy; Former Chair of the Federal Energy Regulatory Commission (invited).**

Required reading:

Tomain & Cudahy, pp. 298-331 (nuclear energy).

Course Materials:

- MIT, The Future of Nuclear Power (2003), pp 1-16.
- National Commission on Energy Policy, Ending the Energy Stalemate, A Bipartisan Strategy to Meet America’s Energy Challenges, pp. 57-61 (2004).
- Nuclear Energy Institute, Highlights of Nuclear Energy Provisions in Energy Policy Act of 2005 (Aug. 2005).
- Energy Daily issues November 3-7.

Nov. 17  
[DWS/PFG]

## XII. Oral Advocacy Project Presentations (additional date TBD)

Nov. 24  
[DWS/PFG]

### XIII. Climate Change Policy

The development of government policies related to the regulation of greenhouse gas emissions can be expected to have fundamentally transformative effects on the U.S. energy industries. The class will describe the principal approaches to greenhouse gas regulation at the State, Federal, and international levels, and discuss the implications of each. This class will further consider how current and future climate change policy will affect the energy sector, and U.S. energy law and regulation. Energy Daily discussion.

**Guest Speaker: Phil Sharp, President, Resources for the Future; Former Member of Congress and Chairman of the House Energy and Power Subcommittee (invited).**

Required reading:

Course Materials:

- Massachusetts v. EPA, 549 U.S. 497 (2005).
- R. Nordhaus and K. Danish, Designing a Mandatory Greenhouse Gas Reduction Program for the U.S., pp. iii-vi, 1-4, 42-45 (Pew Center on Global Climate Change; 2003).
- J. Maslow, “Carbon Tax or Carbon Trading?,” The Energy Independent (Mar. 25, 2007).
- Richard Pierce, “Energy Independence and Global Warming,” 21 Natural Resources and Environment no. 3, pp. 68-71 (Winter 2007).
- D. Smith, R. Nordhaus, & T. Roberts, Designing a Climate-Friendly Energy Policy: Options for the Near-Term, pp. 45-51, Pew Center on Global Climate Change (2002).
- Energy Daily issues November 17-21.