

Notre Dame Law School  
Spring 2024  
Classroom: 1310 Biolchini  
M/W, 11:00am-12:15pm

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## ENERGY LAW

This course will introduce you to the many legal and regulatory issues related to the generation, distribution, and consumption of energy in the United States. Particular attention will be given to the constraints on energy production imposed by environmental and natural resources law, as well as to the political environment in which energy policy is made. The breadth of the course's coverage demands that we rely on materials beyond judicial opinions, so students should be prepared for reading assignments drawn from technical, social scientific, and journalistic sources. Although fossil fuels still represent the lion's share of America's energy portfolio, we will also explore the law's evolving treatment of conservation, energy efficiency, and renewable energy. The class is highly relevant not only to those who are considering a practice in the area of energy law, but also to those with more general interests in environmental or natural resources law, in utilities regulation and administrative law, or simply in this crucial segment of the national economy.

### Course materials:

- The required casebook is Eisen et al., *ENERGY, ECONOMICS AND THE ENVIRONMENT* (Foundation, 5<sup>th</sup> ed., 2020). All page numbers on the reading schedule below refer to this casebook. Supplemental materials (indicated by "supp.") will be sent later via email.
- **Please note, however,** that because many areas of energy law are undergoing rapid change, I will replace certain reading assignments with more up-to-date materials, and will probably do so on short notice. So if you wish to read ahead, please contact me first!
- I strongly recommend that you regularly track a source of news about energy policy and the energy industry in order to better understand the course material. I will bring several such sources to your attention at the start of the term.

### Grading and course requirements:

- The bulk of your grade (80%) will be determined by your performance on an in-class, closed-book final exam. More details about the exam will be provided later in the term.
- The remaining 20% of your grade will be based on your participation in our class meetings. I will consider your punctuality, attendance, preparedness, and the quality (and to a much lesser degree, quantity) of your comments/questions in class.
- Students participating in the Study Abroad component have additional requirements. Details will be provided by email.

### My availability:

- My office hours for Spring 2024 will be Tuesdays from 9:30-11:00am, but I will gladly meet with you at other times as well. Don't hesitate to contact me to set up a time, or just stop by.
- If you have a question or problem, please contact me via email and I will respond as quickly as I can. Substantive questions, of course, are generally best discussed in person.

## TENTATIVE SCHEDULE OF READING ASSIGNMENTS

### I. Introduction & General Principles

- 1.17 General introduction. Read pp. 1-33.
- 1.22 The concept of the public utility. Read pp. 35-56.
- 1.24 The origins of modern utility regulation. Read pp. 56-73, 76-85.
- 1.29 The origins of federal power regulation. Read pp. 90-100, 363-374.

### II. Fossil Fuels

- 1.31 Coal. Read pp. 101-107, 118-121, 128-143.
- 2.5 Oil & gas. Skim pp. 147-162. Read pp. 162-181.
- 2.7 Oil & gas (cont'd). Read pp. 181-198.
- 2.12 Hydraulic fracturing. Read pp. 198-230.
- 2.14 Offshore oil & gas. Read pp. 231-255.

### III. Fossil Fuels & the Clean Air Act

- 2.19 Regulating conventional pollutants. Read pp. 290-317.
- 2.21 Regulating greenhouse gas emissions. Read pp. 317-336 + supp.

### IV. Old-School Clean Energy: Hydropower & Nuclear Power

- 2.26 Introduction to hydropower. Read pp. 374-392.
- 2.28 Section 401 certification; dam relicensing. Read pp. 392-411.
- 3.4 Nuclear power generation. Read pp. 415-425, 435-452.
- 3.6 Nuclear waste. Read pp. 459-478.

### V. Utilities Regulation and Electricity Markets

- 3.18 Cost-of-service regulation. Read pp. 479-482, 485-500.
- 3.20 Cost-of-service regulation (cont'd). Read pp. 501-521.
- 3.25 Cost-of-service regulation (cont'd). Read pp. 521-530, 543-549.
- 3.27 Wholesale electric power markets. Read pp. 683-692, 699-712.
- 4.8 Wholesale electric power markets (cont'd). Read pp. 712-738.
- 4.10 Retail electric power competition. Read pp. 769-791.
- 4.12 [Special session] Symposium on household energy conservation.
- 4.15 Power markets and renewable energy. Read pp. 819-840.

### VI. Cleaner Energy

- 4.17 Dormant commerce clause challenges. Read pp. 840-862.
- 4.22 Transmission capacity and renewable expansion. Read pp. 873-899.
- 4.24 Distributed generation and demand response. Read pp. 968-996.
- 4.29 Energy storage. Read pp. 996-1022.