

Notre Dame Law School
Fall 2024
Classroom: 3130 Eck
M/W, 2:00-3:15pm

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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 figure prominently in 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 Davies et al., *ENERGY LAW AND POLICY* (West, 3rd ed., 2022). 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. 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.

My availability:

- My office hours for Fall 2024 will be Mondays from 3:30-5:00pm, 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

- 8.26 General introduction. Read pp. 17-32, 77-88.
- 8.28 Market power; waste. Read pp. 137-153.
- 9.2 Negative externalities; free-riding. Read pp. 153-170.

II. Natural Resource Extraction

- 9.4 Coal. Read pp. 89-97, 171-192.
- 9.11 Oil and gas. Read pp. 97-104, 192-218.
- 9.16 Shale oil and gas. Read pp. 738-761.
- 9.18 Offshore oil and gas. Read pp. 776-798.
- 9.23 Hydropower. Read pp. 108-117, 218-233.
- 9.25 Solar and wind. Read pp. 117-125, 233-251.

III. Nuclear Power

- 9.30 Nuclear power generation. Read pp. 807-831.
- 10.2 Nuclear waste. Read pp. 861-879.
- 10.7 Decommissioning and negative-value property. Supp.

IV. Cost-of-Service Regulation

- 10.9 Regulatory basics. Read pp. 276-299.
- 10.14 The rate case. Read pp. 299-324.
- 10.16 Electricity federalism. Read pp. 324-346.
- 10.28 The limits of cost-of-service ratemaking. Read pp. 346-359.
- 10.30 Guest speaker.

V. Restructured Power Markets

- 11.4 Restructuring. Read pp. 371-387.
- 11.6 Guest speaker.
- 11.11 Wholesale power markets (cont'd). Read pp. 387-402.
- 11.13 Transmission in restructured markets. Read pp. 410-434.
- 11.18 Transmission in restructured markets (cont'd). Read pp. 434-457.

VI. Integrating Renewables

- 11.20 Guest speaker.
- 11.25 Inducing expansion in renewable generation. Read pp. 457-481.
- 12.2 Integrating state programs with the Federal Power Act. Read pp. 481-499.
- 12.4 Integrating renewables into wholesale markets. Supp.
- 12.9 Distributed generation. Supp.